Evaluation: Changes in competition in different legal markets

An empirical analysis.

October 2013
Contents

Summary ........................................................................................................................................ 1
Context ......................................................................................................................................... 1
Approach taken ............................................................................................................................ 1
Findings .......................................................................................................................................... 4
Data sources and approach to interpretation .............................................................................. 10
Part 1: What is the geography of market segments? .................................................................. 16
  Overview .................................................................................................................................... 16
  Background ................................................................................................................................. 17
  Hypothesis .................................................................................................................................. 17
  Interaction of demand and supply: prices .................................................................................... 20
  Demand: individual consumers advice seeking behaviour .......................................................... 24
  Supply: solicitors’ perspectives .................................................................................................... 31
  Conclusion: The assumed geographical boundaries ..................................................................... 34
Part 2: How has market share changed? ...................................................................................... 41
  Overview .................................................................................................................................... 41
  Background ................................................................................................................................. 42
  Market concentration across all market segments .................................................................... 43
  Conclusions ................................................................................................................................. 59
Part 3: How has the structure of firms changed? ......................................................................... 61
  Overview .................................................................................................................................... 61
  Background ................................................................................................................................. 62
  Alternative business structures .................................................................................................... 63
  Legal disciplinary practices ......................................................................................................... 69
  Other aspects of business structure ............................................................................................ 71
  Fee earning workforce ................................................................................................................. 73
  Conclusions ................................................................................................................................. 80
Part 4: How has the level of innovation changed? ...................................................................... 82
  Overview .................................................................................................................................... 82
  Background ................................................................................................................................. 83
  Innovation in legal services 2006-2009 .................................................................................... 83
  Capabilities and barriers – ABS survey findings ......................................................................... 84
  Publicised innovation in the last three years – reported new services ........................................ 88
  Conclusions ................................................................................................................................. 90
Changes in competition in different legal markets

Glossary.................................................................92
List of figures

Figure 1. The market segmentation framework ................................................................. 2
Figure 2. Groups of market indicators ............................................................................ 3
Figure 3. Breakdown of solicitor market segments by turnover and firms 2012/13 .......... 5
Figure 4. Changes in competition between solicitors firms – a simple summary .......... 8
Figure 5. Solicitors mainly provide ‘local’ services, where local is defined as regional . 19
Figure 6. Distribution of conveyancing prices .............................................................. 21
Figure 7. Big variation: regional spread and median conveyancing prices ................. 22
Figure 8. Conveyancing in London? Go to Newport .................................................... 23
Figure 9. Who is choosing? Past decisions, and friends or relatives ......................... 26
Figure 10. Free-active? – statistically significant differences between solicitors’ customers who actively choose providers and those who rely on recommendations .................... 29
Figure 11. What is important? ‘Specialism’ the main factor in the choice of solicitor .... 29
Figure 12. Consumer market segments served by solicitors firms by main categories of consumers and by any type of consumers ................................................................. 31
Figure 13. Contested consumers? Solicitors firms views on the sources of competition by main market segment ........................................................................................................... 34
Figure 14. Market segment summary of available evidence on consumer behaviour .... 37
Figure 15. Solicitors firms market concentration summary ........................................ 43
Figure 16. Distribution of SRA regulated firms by turnover 2010/11 to 2012/13 .......... 45
Figure 17. External factors impacting solicitors firms 2009-2011 ............................... 46
Figure 18. Limited changes in market share over the past three years ...................... 46
Figure 19. Estimated size of SRA regulated firms compared to all UK businesses 2011/12 ............................................................ 47
Figure 20. Switching lengths – how long it took firms to move into new areas of law ... 48
Figure 21. Number of market segments operated in by all firms and excluding fringe providers .... 49
Figure 22. Number of market segments operated in – urban and rural ....................... 50
Figure 23. Switching market segments – firms operating between 2010/11 and 2012/13 .... 50
Figure 24. Switching market segments – firms operating between 2010/11 and 2012/13 excluding ‘fringe’ firms ................................................................. 51
Figure 25. Lower rural switching activity ................................................................. 52
Figure 26. SRA regulated entities - falling rates of opening and closing .................. 52
Figure 27. Referral arrangements by market segment ............................................... 53
Figure 28. Falling productivity? Turnover per fee earner 2010/11-2012/13 .............. 54
Figure 29. SRA regulated entity market share of the 10 firm ratio in each segment ...... 55
Figure 30. Concentration at a local level 2012/13 .................................................... 56
Figure 31: Highly concentrated local markets by market segment, 2010/11-2012/13 .... 57
Figure 32. Number of regulated entities by regulator and market segment, 2012/13 .... 58
Figure 33. Solicitor market segments, concentration, and entry and exit .................. 59
Figure 34. Rates of SRA regulated firms entry in all market segments ................. 60
Figure 35. Actions taken and changes in cash turnover 2007/8-2010/11 .................. 62
Figure 36. Reasons for gaining an ABS licence – ABS survey responses ................. 63
Figure 37. Proportion of SRA regulated ABS’s broken down by market segment .... 65
Figure 38. Proportion of SRA regulated ABS’s total market share by segment ......... 65
Figure 39. Types of consumer groups served – ABS and non ABS ...................... 66
Changes in competition in different legal markets

Figure 40. ABS firms and use of technology .................................................................67
Figure 41. How long it took to become an ABS – SRA regulated license holders ..................68
Figure 42. SRA regulated ABS licence holders views on regulation ..................................69
Figure 43. LDPS market share .......................................................................................70
Figure 44. More productive? Turnover per fee earner by organisation type over time (upper, median, and lower quartile) .........................................................................................71
Figure 45. Increasing companies – constitution type .........................................................72
Figure 46. Growth in turnover by constitution type .........................................................72
Figure 47. No change – solicitors firms offices .................................................................72
Figure 48. Fee earning workforce changes .......................................................................73
Figure 49. Changes in all fee earners by segment (excluding fringe firms) .........................75
Figure 50. Organisation type and fee earners ....................................................................75
Figure 51. Proportion of firms with at least one accredited member compared to number of firms reporting any turnover in that category .................................................................76
Figure 52. Self reported complaints by type of organisation ...............................................77
Figure 53. Turnover generated by complaints received and referred to the Legal Ombudsman ....77
Figure 54. Changes in turnover and self-reported complaints .............................................78
Figure 55. Turnover generated per complaint to LEO in market segments with large proportions of individual consumers .........................................................................................79
Figure 56. Changes in turnover and complaints to LEO by market segment, 2011/12 to 2012/13 80
Figure 57. NESTA survey of innovation in law firms compared to other service sectors 2009 ...84
Figure 58. What makes ABS different from other types of law firm? ..................................86
Figure 59. What do you see as the main barriers to innovation and growth in the legal services market? .....................................................................................................................87
Figure 60. Publicised innovations by type of innovation ....................................................89
Figure 61. Number of publicised innovations by market segment .....................................90
Figure 62. Price changes for business to business legal services .......................................91
Acknowledgements

This analysis was undertaken between April and August 2013 by Robert Cross, LSB research manager, with input from a range of colleagues.

The LSB would like to thank: all those who took the time to respond to the survey of ABS organisations; Steven Bolam, Information Manager at the SRA for provision of an anonymous data set and responding to queries on interpretation; Victoria Swan at the Council for Licensed Conveyancers for providing summary information and responding to queries; Richard Collins and Tim Livesley at the SRA, Keith Blakemore and Nina Fletcher at the Law Society, Professor Mari Sako, Said Business School, for feedback and comments on a draft version of this report. While this report is improved as a result, the interpretation of the analysis findings remains the LSB’s alone.

Please direct any comments or queries about this report to:
robert.cross@legalservicesboard.org.uk
Summary

Context

This report presents an empirical analysis of how competition has changed in each of the various markets regulated entities operate in. We use the market segmentation framework developed by Oxera Consulting Ltd for this analysis\(^1\), segmenting the market not by profession but by consumer demand.

Barriers to competition in professions come in many forms, as identified by the Office of Fair Trading investigations in 2001 and 2013. Regulation can act as a barrier to competition. We believe that a competitive market is in the best interests of consumers and the public. Therefore we monitor competition as a leading indicator of potential issues with regulation. Our analysis focuses on outcomes – reviewing the 2010/11 to 2012/13 period to understand how levels of competition have changed.

This report forms part of our ongoing monitoring of the impact of the reforms introduced by the Legal Services Act 2007 (LSA). Following on from the market impacts baseline report in 2012 that looked across all the regulatory objectives\(^2\), this analysis focuses on the regulatory objective of ‘promoting competition in the provision of services in the legal sector’. The LSA gives each regulator, the Office for Legal Complaints (OLC), and the Legal Services Board (LSB) a legal duty to as far as is reasonably practicable of promoting competition in the provision of legal services.

Approach taken

In this analysis we focus on solicitors firms. We do this in part because of the Solicitors Regulation Authority’s (SRA) comprehensive management information on the entities they regulate, when contrasted with the limited information available from other regulators. Further, solicitors firms constitute by far the largest proportion of the regulated legal services sector on any measure, providing a diverse range of services in a variety of different ways. That makes them a reasonable area to focus on in seeking to identify market segments in the legal market where competition has changed.

This is an empirical analysis reporting on areas where we can observe change. Limited data prevents any analysis of direct cause and effect in most cases. In some circumstances we speculate about what might be driving the observed changes. Others may speculate differently to the LSB and we value such dialogue.

If competition has increased, there should be some observable changes in the market as a whole and the individual market segments within it. These changes are summarised by the Competition Commission as: “suppliers cutting prices, increasing output, improving quality or variety, or introducing new and better products, often through innovation; supplying the products customers want rewards firms with a greater share of sales. Beneficial effects may

---


\(^2\) See [https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf)
also come from expansion by efficient firms and the entry into the market of new firms with innovative products, processes and business models, and the exit of less successful ones.\(^3\)

In anticipation of the need to understand how the market is changing, in 2011 the LSB commissioned Oxera to develop a framework to monitor the legal services market. This was developed in consultation with a wide range of stakeholder groups, and has been used by the regulators in assessing their regulatory performance.\(^4\) The Oxera market segmentation model is the first framework to fully segment the legal services market into different markets, beyond descriptions of the different legal professions. The different market segments are built around the type of problem, the type of consumer, and the type of activity undertaken. Consumer needs drive these dimensions – the demand side – not the type of business delivering the service. We focus on two of these three elements in this analysis – category of law and type of consumer – because of data availability. This is illustrated in figure 1 below. This framework is also reflected in the LSB’s evaluation framework.\(^5\)

**Figure 1. The market segmentation framework**

<table>
<thead>
<tr>
<th>Type of problem (^6)</th>
<th>Individual consumers</th>
<th>Small businesses and charities</th>
<th>Large businesses, Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business affairs, corporate structure, finance and tax</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Civil liberties</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Consumer</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Conveyancing – residential</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conveyancing – commercial</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Crime</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Employment</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Family</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Immigration and nationality</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Injury</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Property, construction and planning</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Welfare and benefits</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Wills, trusts, and probate</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---


\(^5\) Section D The Market perspective, where the required outcomes are: the market is more competitive; more consumers can access services at an affordable cost; there is greater plurality of and innovation in legal services. See [http://www.legalservicesboard.org.uk/news_publications/publications/pdf/evaluation_framework_april_2011.pdf](http://www.legalservicesboard.org.uk/news_publications/publications/pdf/evaluation_framework_april_2011.pdf)

\(^6\) A full description of the problem sub types is included in the segment by segment analysis in Annex 1.
The shaded areas are the market segments where there is no consumer demand for services. This might be because of the nature of the law itself – for example family law does not apply to businesses.

In measuring changes in competition, our approach is to review a range of research. We have also undertaken our own analysis of three years of SRA anonymous entity level data against the key indicators identified in this framework. The groups of indicators are shown in figure 2.

Given the relatively recent introduction of the reforms designed to remove barriers to competition, this analysis focuses on the supply side to seek to understand how legal businesses have responded. That means looking at indicators around the composition of supply. We take this approach on the basis that suppliers will respond more quickly to reforms than consumers, meaning we can observe the impacts more quickly. We also take this approach because of the limited information on market outcomes – most notably quality and prices. However, where information in relation to other groups of indicators is available, we use this to inform our conclusions.

**Figure 2. Groups of market indicators**

- **Drivers** - these indicators monitor the emergence of changes, shocks or trends that are likely to drive changes in the legal services sector. Indicators are generally binary: does a regulatory change occur or not? Has the MoJ altered the funding of legal aid or not? They form the first part of the chain of events that may alter outcomes for the consumer.

- **Market functioning** - these indicators help to understand the mechanisms and processes through which the drivers may alter the composition of supply and/or market outcomes. They consider whether there are reasons why the market is not functioning effectively - eg are there barriers to entry? Can consumers effectively choose between providers? Can consumers complain? By identifying the market dynamics the mechanisms through which regulatory changes (and other drivers) affect the sector can be assessed.

- **Composition of supply** - similar to the market functioning indicators, these are relevant to understanding how drivers may alter market outcomes. They provide information on the conduct of supply, and can therefore be useful in providing early evidence of supply-targeted regulation - eg has allowing ABS resulted in additional business registrations? Have market shares changed? Are these new businesses behaving differently to incumbents? In this way, such indicators can be important in establishing the causality of changes in market outcomes.

- **Market outcomes** - these indicators monitor the performance of markets. Relevant indicators consider what matters to consumers - price, quality and access (as part of volume) - and evidence on the efficiency of the market more generally - innovation, costs and productivity. According to the immediate regulatory focus the importance of different indicators may shift.

This investigation is split into four parts, with each part designed to answer a specific question in relation to changes to competition. These are:

---

7 For a discussion of the expected impacts of competition on price please see the benefits from competition: some illustrative UK cases, DTI 2004, [http://www.berr.gov.uk/files/file13299.pdf](http://www.berr.gov.uk/files/file13299.pdf)
1. **What is the geography of market segments?** This part seeks to establish the geographical limits of each market segment, so that we can ensure further analysis is based on the appropriate definition of a market segment. This uses a wide range of consumer and provider survey data and previous research commissioned by a range of different stakeholders.

2. **How has market share changed?** This part seeks to understand how market share and the number of providers has changed over time, and what the aggregate picture suggests about supply side switching behaviour. This uses data provided by the regulators and the findings of recent surveys.

3. **How has the structure of firms changed?** The looks at how firms in the market have changed their structure and organisation type over the 2010/11-2012/13 period, and what this might suggest about the competition they face. This relies on SRA entity data and the findings of a survey of solicitors firms.

4. **How has the level of innovation changed?** This final part uses the findings of a review of media coverage on legal services to look at the range of new service offerings over the past three years. We set out the limitations of this approach, but consider it worthwhile in the absence of any other information. The analysis is supplemented with the findings from a survey of alternative business structure (ABS) licence holders which achieved a 33% response rate.

**Findings**

Our starting assumption is that there are no geographical boundaries to the supply of and demand for legal services, and we consider all market segments to have national boundaries. We specifically exclude international markets from this analysis, but recognise their growing importance, especially to the largest law practices. In reviewing a range of evidence to test this assumption we conclude that all market segments can be considered to be national.

Looking at research into consumer behaviour suggests that search areas are presently limited by the challenge of comparing providers. We believe the potential for brands in both the regulated and unregulated sector to change this situation is significant.

This analysis also suggests that local markets are generally associated with higher levels of concentration and therefore an increased likelihood of lower levels of competition.

Real aggregate turnover for all SRA regulated firms has fluctuated between +/- 1% of 2010/11 levels, despite a greater proportionate fall in the number of firms overall. In 2010/11, there were 9,120 firms reporting turnover, with a total turnover of £18.9bn. In 2012/13, there were 8,745 firms reporting turnover with a total turnover of £18.7bn – a 4% fall in firm numbers.

The value of each segment has remained broadly static, as has the proportion of firms in each segment. The proportion of SRA regulated firms in each segment and the proportionate value of the market segments is shown in figure 3 below. Over the period under investigation, there has been a 3% reduction in the percentage of firms reporting turnover in the residential conveyancing segment, while real turnover has risen by 2%. In the other litigation segment, there has been a 6% growth in firms and an 8% increase in turnover.

---

8 The financial year from 1st April to 31st March.
The number of solicitors employed by these firms fell by 0.27% between 2011/12 and 2012/13, while the total fee earning workforce rose by 5%.

Looking at market concentration, aggregate measures point to limited changes over the past three years. All market segments are characterised by low levels of overall concentration, especially the residential conveyancing and family market segments. Overall 1% of firms account for 51% of market share, measured by turnover.

Looking at aggregate behaviour, there does not appear to have been significant changes in expansion or concentration activity across market segments over the past three years. This might be expected given the relatively short timescale involved, even given the exceptional level of change in this sector.

**Figure 3. Breakdown of solicitor market segments by turnover and firms 2012/13**

<table>
<thead>
<tr>
<th>Market segment</th>
<th>Percentage of total market value</th>
<th>Percentage of SRA regulated firms in this segment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business affairs, corporate structure, finance and tax</td>
<td>25%</td>
<td>34%</td>
</tr>
<tr>
<td>Civil liberties</td>
<td>0.1%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Consumer</td>
<td>0.1%</td>
<td>3%</td>
</tr>
<tr>
<td>Conveyancing – residential</td>
<td>5%</td>
<td>54%</td>
</tr>
<tr>
<td>Conveyancing – commercial</td>
<td>7%</td>
<td>50%</td>
</tr>
<tr>
<td>Crime</td>
<td>4%</td>
<td>24%</td>
</tr>
<tr>
<td>Employment</td>
<td>4%</td>
<td>41%</td>
</tr>
<tr>
<td>Family</td>
<td>5%</td>
<td>47%</td>
</tr>
<tr>
<td>Immigration and nationality</td>
<td>1%</td>
<td>15%</td>
</tr>
<tr>
<td>Injury</td>
<td>12%</td>
<td>31%</td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td>2%</td>
<td>6%</td>
</tr>
<tr>
<td>Other: Alternative dispute resolution</td>
<td>2%</td>
<td>7%</td>
</tr>
<tr>
<td>Other: Debt collection</td>
<td>1%</td>
<td>25%</td>
</tr>
<tr>
<td>Other: Financial advice</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>Other: Litigation</td>
<td>15%</td>
<td>55%</td>
</tr>
<tr>
<td>Other: Other</td>
<td>3%</td>
<td>35%</td>
</tr>
<tr>
<td>Property, construction and planning</td>
<td>2%</td>
<td>40%</td>
</tr>
<tr>
<td>Welfare and benefits</td>
<td>0.3%</td>
<td>4%</td>
</tr>
<tr>
<td>Wills, trusts, and probate</td>
<td>6%</td>
<td>54%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
<td>-</td>
</tr>
</tbody>
</table>

The analysis shows limited changes in market concentration in any individual segment, with the exception of the injury segment. In that segment there have been higher rates of entry and exit than in other market segments. Market segments that have seen larger levels of change tend to be the low value market segments of civil liberties, consumer problems, and welfare and benefits where relatively small changes have a bigger impact. Overall, the level of recorded new entrants is falling over time.

Looking at the whole market, the analysis finds that 49% of SRA regulated firms have seen at least a 1% increase in real turnover in the past three years, while 51% have seen a reduction. Falling productivity across this sector might also suggest that margins are under pressure. Total productivity is measured as real turnover per fee earner. In the future, we might want to consider a revised version of this measure as business models change.
make greater use of capital and less use of fee earners. On this measure, total productivity fell by 3% between 2010/11 and 2012/13.

At the same time, there is yet limited evidence of competitive pressure driving firms to adapt to service any areas of unmet consumer legal need, facilitating improvements in access to justice. For example, a consumer facing a legal problem in relation to employment and family during 2009 and 2011 was just as likely to take no action to handle alone as they were between 2006 and 2009. In 2012, just 29% of small businesses sought advice when faced with a legal problem, and only 12% sought advice from a solicitor.

Further, recent research shows continued public perception of legal professionals as ‘being a law unto themselves’, with a lack of trust in professionals as a barrier to accessing their services.\textsuperscript{9} Public trust in the legal profession fell from 47% in 2011 to 42% in 2013, though this is similar to falls in public trust in other professions.\textsuperscript{10}

The key changes in business structures have been the growth in the numbers of Legal Disciplinary Practices (LDPs), introduced in March 2009, and the introduction of ABS, permitted by the SRA from January 2012 and by the Council for Licensed Conveyancers (CLC) from October 2011. LDPs have seen increases in turnover, improving productivity, and are associated with greater proportionate use of non-qualified fee earners when compared to other law firms.

Over the past three years, while LDPs never represent more than 5% of the total number of firms, they accounted for 14% of all market share by turnover in 2012/13. They have growing market shares in most market segments, most notably civil liberties, commercial conveyancing, employment and property, construction and planning. Further firms who were LDPs in 2012/13 were statistically more likely to have seen an increase in turnover in the past three years – 57% compared to 49% for all providers.

ABS firms are concentrated in the injury segment. As a group, in 2012/13 they accounted for 20% of market share in the injury segment, compared to just 3.5% of market share in the employment segment. The 20% market share in injury is evenly split between new entrant ABS organisations and existing SRA regulated firms who converted. Previous research\textsuperscript{11} found firms were more productive were most likely to operate in the injury market segment. To what extent the findings of this analysis are driven by the concentration of ABS organisations in this market segment is unknown.

Based on our survey, while ABS organisations provide services to a wide range of consumers, they are more likely to serve business consumers as opposed to individuals. These firms appear to use technology to deliver services to a greater extent than other firms do. In all, 91% of survey respondents indicated having a website that they used to deliver information and other services to their customers. This included basic information, online case tracking and feedback systems. This compares to just 52% of other solicitors firms having a website they used for advertising, and 6% using legal networks websites.

Reported complaints received, resolved, and referred to the Legal Ombudsman (LEO) compared to turnover show that LDPs and ABS have better complaints resolution ratios. At the first tier, new business structures report proportionally more complaints compared to other SRA regulated entities. However they also resolve more complaints without escalation

\textsuperscript{9} See https://research.legalservicesboard.org.uk/wp-content/media/Understanding-Consumers-Final-Report.pdf
\textsuperscript{10} http://www.legalservicesconsumerpanel.org.uk/ourwork/CWI/documents/2013%20Tracker%20Briefing%204_confidence.pdf
Changes in competition in different legal markets 2013

to the second tier. ABS resolved 11 complaints for every one referred to LEO. For LDPs this was 5, and for other solicitors firms this was 4.

While there is no data capturing the different organisation types by number of customers, SRA entity data does record levels of turnover. LDPs generated the highest levels of turnover per complaint – and therefore receive the lowest number of complaints when this measure of size is taken into account. In 2012/13 LDPs generated £7m in turnover for every complaint referred to LEO for resolution, compared to £4.3m for ABS and £4.5m for other solicitors firms.

The analysis attempts to capture how the levels of innovation have changed in the past three years, using the standard classifications of product, process, marketing, and organisational innovations. We do this through reviewing media articles on innovation in legal services published between 2010/11 and 2012/13, and analysing responses to the ABS survey. We recognise this approach has its limitations, but it serves to capture publicised levels of innovation in the absence of any better measures. We would hope that future analysis will be able to be more in-depth, but this will require coordinated research with regulators to address the deficit of information in this area.

Generally, the business affairs, other, injury, employment, and family market segments are associated with the highest level of publicised innovations. The civil liberties, consumer, immigration, crime, and intellectual property rights market segments are associated with the lowest levels, but this could be explained by lower levels of media interest in these areas. ABS organisations are associated with more frequent reports of innovations when compared to other SRA regulated providers, with around 13% of ABS organisations publicising an innovation not related to their organisational structure. Just 1% of other SRA regulated organisations reported any form of innovation.

Looking at innovation more widely, NESTA reported in 2009 that law firms felt the main barrier to innovation was cultural – conservatism was a major constraint on innovation in legal services. They concluded this was driven partly by regulation. Respondents to the survey of ABS organisations saw regulation (43% of SRA regulated ABS licence holders) and the traditional partnership model (41%) as key barriers to innovation and growth. However, another key issue reported was the uncertainty of future laws and regulation - 47% for SRA but just 8% for CLC regulated respondents.

However, while 86% agreed or strongly agreed with the statement that “Complying with legal services regulation adds significant costs to running a business”, 78% agreed or strongly agreed that “legal services regulation reinforces best practice and good management”. This is similar to the findings of the SRAs analysis of the impacts of outcomes focussed regulation.

As a simple way of summarising the results of this analysis, the table below ranks each segment against some of the key criteria used. This uses data from 2012/13, to provide an un-weighted comparison of levels of competition across the different market segments. This looks at factors in 2012/13, as well as changes over the 2010/11-2012/13 period.

This approach identifies the intellectual property rights segment as having lower levels of change in competition when compared to the other market segments, over the past three years. This is because there has been no change in the makeup of the largest ten firms by market share, a smaller number of providers than in other market segments, limited entry or conversion by ABS organisations, and limited reports of innovation.

However, this is an area where a range of substitutes to solicitors firms are available – patent and trademark attorneys, barristers, and un-regulated providers for example.
Changes in competition in different legal markets

The Intellectual Property Regulation Board (IPReg) regulated entities account for 23% of all regulated entities in this market segment, but what competition they have experienced and how they have responded is unknown.

The same is true of the business affairs segment, where SRA regulated firms compete against a range of alternative service providers, most notably accountants in the case of small business consumers, and international firms in the case of large business consumers. There are reported to be over 200 foreign law firms in the UK, the largest ten of which had a combined turnover of £844m in 2011/12. How consumers switch to different service providers will have an impact in this market segment in particular, and is not captured in this analysis.

Figure 4. Changes in competition between solicitors firms – a simple summary

<table>
<thead>
<tr>
<th>Segment</th>
<th>Change in real market value 11/12-12/13</th>
<th>Number of SRA firms</th>
<th>Largest 10 market share</th>
<th>New entrants in the largest 10</th>
<th>Levels of entry (market share)</th>
<th>Levels of exit (market share)</th>
<th>New business structures</th>
<th>Innovation</th>
<th>Publicised levels</th>
<th>Change in competition (Low, Medium, High)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business affairs, corporate structure, finance and tax</td>
<td>-6%</td>
<td>2,932</td>
<td>38%</td>
<td>0</td>
<td>3%</td>
<td>2%</td>
<td>11%</td>
<td>0%</td>
<td>24%</td>
<td>Low</td>
</tr>
<tr>
<td>Civil liberties</td>
<td>5%</td>
<td>129</td>
<td>69%</td>
<td>6</td>
<td>17%</td>
<td>4%</td>
<td>19%</td>
<td>0%</td>
<td>2%</td>
<td>Low</td>
</tr>
<tr>
<td>Consumer</td>
<td>-19%</td>
<td>289</td>
<td>50%</td>
<td>5</td>
<td>52%</td>
<td>6%</td>
<td>4%</td>
<td>7%</td>
<td>2%</td>
<td>Med</td>
</tr>
<tr>
<td>Conveyancing – residential</td>
<td>0%</td>
<td>4,764</td>
<td>5%</td>
<td>5</td>
<td>6%</td>
<td>8%</td>
<td>12%</td>
<td>2%</td>
<td>6%</td>
<td>High</td>
</tr>
<tr>
<td>Conveyancing – commercial</td>
<td>0%</td>
<td>4,352</td>
<td>23%</td>
<td>1</td>
<td>4%</td>
<td>5%</td>
<td>20%</td>
<td>2%</td>
<td>5%</td>
<td>Med</td>
</tr>
<tr>
<td>Crime</td>
<td>-9%</td>
<td>2,117</td>
<td>9%</td>
<td>1</td>
<td>5%</td>
<td>7%</td>
<td>9%</td>
<td>1%</td>
<td>3%</td>
<td>Low</td>
</tr>
<tr>
<td>Employment</td>
<td>-4%</td>
<td>3,563</td>
<td>23%</td>
<td>1</td>
<td>4%</td>
<td>6%</td>
<td>18%</td>
<td>4%</td>
<td>8%</td>
<td>Med</td>
</tr>
<tr>
<td>Family</td>
<td>-3%</td>
<td>4,278</td>
<td>6%</td>
<td>0</td>
<td>6%</td>
<td>8%</td>
<td>11%</td>
<td>2%</td>
<td>8%</td>
<td>High</td>
</tr>
<tr>
<td>Immigration and nationality</td>
<td>-4%</td>
<td>1,341</td>
<td>28%</td>
<td>0</td>
<td>5%</td>
<td>8%</td>
<td>14%</td>
<td>0%</td>
<td>2%</td>
<td>Low</td>
</tr>
<tr>
<td>Injury</td>
<td>0%</td>
<td>2,713</td>
<td>25%</td>
<td>6</td>
<td>15%</td>
<td>19%</td>
<td>15%</td>
<td>20%</td>
<td>11%</td>
<td>High</td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td>-7%</td>
<td>510</td>
<td>40%</td>
<td>0</td>
<td>4%</td>
<td>3%</td>
<td>13%</td>
<td>0%</td>
<td>2%</td>
<td>Low</td>
</tr>
<tr>
<td>Other</td>
<td>0%</td>
<td>5,453</td>
<td>25%</td>
<td>0</td>
<td>6%</td>
<td>6%</td>
<td>19%</td>
<td>4%</td>
<td>16%</td>
<td>High</td>
</tr>
<tr>
<td>Property, construction and planning</td>
<td>1%</td>
<td>3,431</td>
<td>24%</td>
<td>1</td>
<td>5%</td>
<td>9%</td>
<td>18%</td>
<td>2%</td>
<td>4%</td>
<td>Med</td>
</tr>
<tr>
<td>Welfare and benefits</td>
<td>-23%</td>
<td>368</td>
<td>39%</td>
<td>5</td>
<td>12%</td>
<td>17%</td>
<td>18%</td>
<td>6%</td>
<td>2%</td>
<td>Med</td>
</tr>
<tr>
<td>Wills, trusts, and probate</td>
<td>0%</td>
<td>4,752</td>
<td>13%</td>
<td>1</td>
<td>5%</td>
<td>9%</td>
<td>13%</td>
<td>2%</td>
<td>6%</td>
<td>High</td>
</tr>
</tbody>
</table>

---

12 Page 6, Legal Services, March 2013, The City UK, [http://www.thecityuk.com/research/]
By contrast, the injury segment ranks among the highest in terms of the level of change in competition. This is driven by a relatively high level of change in the makeup of the largest ten firms by market share entry. Further, ABS organisations have achieved a high market share, and there are relatively high levels of publicised innovation. Recent changes to legislation are assumed to have driven the relatively high level of new entrants.

In summary, ten key points about changes in competition in the solicitors market over the past three years are:

1. Most market segments are national or have the potential to be;
2. Real aggregate market values have remained largely constant in the past three years;
3. Just half of firms have grown turnover, but levels of unmet need remain similar for both individuals and small businesses;
4. Market shares have changed very little in most market segments;
5. ABS organisations are starting to have an impact, most notably in the injury segment;
6. New business structures have increased market share over the past three years;
7. New business structures are more productive, as measured by turnover per fee earner;
8. New business structures have a higher complaints resolution rate for first tier complaints;
9. Publicised innovation is most prominent in ABS organisations and larger solicitors firms;
10. Regulation is still reported to be a significant barrier to innovation and growth.

The impacts arising from the LSA are still at an early stage, and will take some years to come into full effect. While this analysis doesn’t establish cause and effect, it does show that new business structures are performing well on some measures. Clearly some market segments have been impacted more quickly than others have. How new regulatory changes, for example a growth in the number of ABS licensing authorities, impact on competition is a vital part of ensuring regulation is targeted, effective and proportionate.
Data sources and approach to interpretation

SRA entity data

This analysis is only possible because of the comprehensive management data collected by the SRA. This includes data on turnover\(^{13}\) and structure of each regulated entity. This data has been provided to the LSB anonymously so that no individual firm can be identified. This covers all SRA regulated entities in existence at any point between 2010/11 to 2012/13 period.

The data reported to the SRA is based on the latest full year’s information that is available to the firm. This has the inevitable effect of introducing a time lag. While all the entities reported turnover from the 2012/13 accounting year, entities report performance in the past year as opposed to current activity. This should be noted when interpreting the results of this analysis.

The SRA provided data prior to the 2012/13 data validation exercise, and therefore removed some turnover values where errors were known to exist. To make the calculations necessary for our analysis, we have excluded a proportion of records in the following ways:

a. The data set from the SRA contained anonymous records of individual law practices’ renewal data for 2010/11, 2011/12, and 2012/13. This gave information for 13,078 SRA regulated law practices for 2010/11-2012/13. If the firm did not report a total turnover figure in any of the three years, and were not a new firm, they were excluded from the data set. This affected 20% of all records, and leaves around 1.4% of total turnover excluded for each year.

b. Where a firm reported turnover in 2010/11 and 2012/13 but zero total turnover in 2011/12 we excluded this firm from the analysis. This affected 0.1% of records.

c. Where the percentage breakdown of turnover provided was less or more than 100%, we have reweighted the breakdown to 100%. This was necessary for 4% of records in 2010/11, 6% in 2011/12, and 3% in 2012/13.

In our analysis, we exclude all organisations in SRA records that are not recorded as a ‘Law practice’. That means we exclude organisations that offered legal services in house, or where solicitors are employed at regulatory bodies, court services and others. In 2012/13, these organisations classified as ‘Commerce and Industry’ accounted for 25% of SRA records, with a further 7% of records relating to solicitors working in an organisation other than ‘Law Practices’. This means some firms classified as new entrants may be organisations using an ABS license to use in house lawyers to offer legal services externally.

As a consequence, our definition of a firm is one with a head office recorded as a law practice that has positive turnover in any of the three years, and has continuous positive turnover. Others may use different definitions.

When considering entry and exit we look at a number of aspects. Each year some firms leave the market, and move to other markets, some firms fail and shut down completely, while a group of firms remain in the market. How these incumbents behave will affect market concentration and therefore to some degree competitiveness. At the same time, a group of new firms enter the market. These can be firms moving from other markets or completely

\(^{13}\) For a definition see: [http://www.sra.org.uk/sra/legal-services-act/lsa-glossary.page](http://www.sra.org.uk/sra/legal-services-act/lsa-glossary.page)
new firms. Finally, there is another group of firms in the market who left in the previous year but have returned to offer services again. The sum of these movements adds up to the churn in each segment.

Further entry and exit figures may be over-stated. Because of the way data on changes in firm structure is recorded, this figure will capture a firm changing partnership status, from sole practitioner to full partnership for example. In this analysis, numbers of new entrants should be considered to be a maximum, with the number of genuine new entrants being lower, though remains unknown. This is also true for firms who closed by the start of the year. The SRA estimate that the true values will be significantly less. For example, they estimate that from January 2013 to July 2013, of the approximate 400 ‘firm closures’, around 80 ceased practicing. This is approximately 20% of the total figure. The SRA are confident that this can be applied to 2012/13 but not to previous years. The SRA will be able to capture this data from 2015/16 onwards as new IT systems are rolled out.14

For the analysis of productivity we have calculated turnover per fee earner. For turnover per fee earner, we have used the number of solicitors where the total number of legally qualified and non legally qualified fee earners was zero, but the number of solicitors was greater than zero. This was necessary for 7% of records in 2012, 14% in 2011, and 12% in 2010.

For the analysis of LDPs, from 2012/13, the SRA no longer records whether a firm is an LDP or not unless they have a non-lawyer owner. For the purpose of this analysis, we have assumed that LDPs that are still reporting turnover are still LDPs and have not reverted to non-LDP status, beyond the change in administrative recording.

The Oxera category of public and administrative law is subsumed into the ‘other’ category due to the format of available data. We also combine crime prosecution and defence for similar reasons, and corporate taxation and other business affairs are subsumed into corporate structuring and finance. That groups large ‘Magic Circle’ firms with a range of firms offering general business advice. It is difficult to see how these might actually be substitutes for one another in a consumers eyes – would a small business ever seek advice from a Magic Circle firm for example – but the data limits further separation without making assumptions. However, because of the way data is collected for conveyancing turnover, we can split the market for residential and commercial conveyancing – effectively splitting the conveyancing segment by consumer type.

Summary information from the Council for Licensed Conveyancers

The CLC provided a summary of the market share of the largest ten regulated entities in 2011, 2012, 2013, with each year ending in July. These firms deliver regulated legal services in the conveyancing – residential, conveyancing – commercial, and wills, trusts, and probate market segments. They act as an alternative to using solicitors firms for consumers in these market segments – they are a demand side substitute.

We have assumed that they are equally proportionally represented in both the residential and commercial conveyancing market segments. For the wills, trusts, and probate segment, as just 26 entities had a licence to undertake probate in 2011, compared to 4,752 SRA regulated firms, they have not been included in the analysis of this segment.

Data from other regulators

IPReg were unable to provide any information beyond numbers of entities.

---

14 Estimate provided by the SRA as part of the comments on draft analysis, September 2013
The Bar Standards Board (BSB) regulate self-employed barristers, which constitute individual business entities for the purposes of this analysis. Surveys show the level of direct access work, and the number of self employed barrister working in each area. We have used these surveys to develop estimates, set out below. No further published information was available.

The Cost Lawyers Standards Board, ILEX Professional Standards, and the Master of Faculties currently regulate individuals as opposed to business entities, and are therefore excluded from this analysis.

When considering the immigration and nationality segment, we refer to the Office of the Immigration Services Commissioner’s annual reports for information on regulated entities. We also use published information from the Claims Management Regulator in relation to the injury segment.

**Survey of solicitor firms**

Throughout this analysis we use the findings of a 2012 survey of solicitors firms. Jointly funded by the Law Society, the Ministry of Justice, and the LSB, this was a telephone survey of 2,007 solicitors firms in England & Wales, carried out in April and May 2012. This covers the preceding three years.\(^\text{15}\)

**Surveys of self employed barristers**

For the purposes of this analysis, we are looking to include situations where barristers can reasonably be considered to be substitutes for solicitors where a consumer purchases a legal service. There are two main situations where this occurs – direct access and advocacy. We use a range of research to estimate figures about where they might reasonably be substitutes for solicitor services. We treat each self-employed barrister as a business entity.

We refer to the findings of the 2011 *Barristers’ working lives* survey published by the BSB in 2011.\(^\text{16}\) This reports on the findings of an online and paper survey conducted between July and August 2011 that resulted in 2,930 responses from barristers. The relevant questions on areas of practice received 2,205 responses from the self employed bar\(^\text{17}\), representing 17% of the total 12,674 self-employed barristers practicing in 2011.\(^\text{18}\) This survey collected data on which areas they practice in. It recorded which areas of work barristers were employed in for at least 20 per cent of their time, then, if more than one area, in which area they practise ‘most’ of their time. We apply these findings to the population to estimate the number of barristers working in each market segment, using the figures for where they spend most of their time in each practice area. This is to avoid double counting where different practice areas are mapped into each segment. This approach means that we may slightly underestimate the number of barristers supplying services in each segment, but is based on the best data available at present. Additionally, because of the sample size achieved, these figures have a margin of error of plus or minus 2.5% at a 99% level of confidence. In the course of this analysis we shared these figures with the BSB for comment. While this does not allow us to distinguish between whether barristers are delivering work directly to consumers – and are therefore act as a real substitute for solicitors - or are being

---

\(^\text{15}\) See https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf

\(^\text{16}\) See https://www.barstandardsboard.org.uk/media/1385164/barristers__working_lives_30.01.12_web.pdf

\(^\text{17}\) See Table 2.10: Area of practice where barristers spend most of their working time; page 24, https://www.barstandardsboard.org.uk/media/1385164/barristers__working_lives_30.01.12_web.pdf

\(^\text{18}\) Page 6, https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf
referred work from solicitors, it does provide the best publically available source of information on which market segments barristers operate in.

Considering public access, a 2012 survey by the BSB\textsuperscript{19} reported that 4,108 barristers were registered to undertake public access. This represents around a third of all self-employed barristers. There were 414 respondents to this survey from a population of 4,108 public access barristers who are registered as such with the Bar Council. The majority of respondents indicated that public access represented just 1 to 9% of their overall work. However while small, public access was reported in all practice areas, but most prominently in civil, criminal, chancery, commercial, family, and employment. The type of consumer using public access broadly corresponded to the types of consumers coming via referral. The majority of respondents were approached by natural persons (59% for public access, 58% for other), followed in proportion by unsophisticated legal persons (9% for public access, 7% for other), sophisticated legal persons (5% for public access, 8% for other), and government (1% for public access, 6% for other).

Rights of audience mean that the supply of advocacy in just 1.6% of all court proceedings in 2009 was limited by regulation to just barristers and solicitor advocates.\textsuperscript{20} While these are likely to represent the more serious, complex, and high value cases, that means that in the remaining 97.4% of all proceedings solicitors firms can substitute in house resources for external barristers. To what extent they are is unknown, but findings from the 2012 survey of solicitors firms show that a third of solicitors firms used external advocates to some degree, and 20% of firms outsourced all of their advocacy work. The same survey also found that solicitors firms undertaking crime maintained a higher proportion of advocacy in-house, on average, in an area where the majority of self-employed barristers undertake work.

Taken together these different elements support an assumption of treating all self employed barristers as a possible demand side substitute for solicitor legal services over the past three years, though only at a small scale. The figures provided in these estimates are therefore over estimates at this point in time, but are the best available in the absence of any other data. With BSB intentions to regulate business entities in the future, this is expected to change in the coming years.

**Mystery shop of conveyancing prices**

Using price comparison websites, we collected 180 quotes for the sale of a freehold house in London in April 2013. All sites asked for details of the location of the house for sale. We use this data in part 1 of this investigation. This includes quotes from both SRA and CLC regulated organisations.

**Survey of ABS licence holders**

To support this investigation we also undertook a survey of all ABS licence holders. This included both SRA and CLC regulated ABS organisations. This survey was conducted online, with emails sent to ABS licence holders on 12 July. As of June 2013, there were 193 ABS licence holders. Further, because the SRA were unable to provide email addresses for the survey, we conducted an online trawl for contact email addresses. This meant that 14 email addresses were unobtainable for organisations regulated by the SRA, meaning a total of 179 organisations received an email invitation to undertake the survey. Of these 38 were licensed by the CLC and 141 by the SRA.

\textsuperscript{19}See http://www.legalservicesboard.org.uk/Projects/pdf/annex_4a_bsb_public_access_survey_report.pdf
\textsuperscript{20}See https://research.legalservicesboard.org.uk/analysis/supply/static-market-analysis/structure-of-supply/#Advocacy
There were a total of 62 responses, and 2 pilot responses. Therefore respondents accounted for 33% of all ABS licence holders as of June 2013. All responses were anonymous. 60 respondents answered all of the main survey, and 2 completed only parts of the survey. The pilot responses were applicable to about three quarters of the survey due to changes made post the piloting exercise. At this sample size all results have a margin of error of +/- 10%\(^{21}\) when applied to the population. When broken down to SRA and CLC specific results, there is a margin of error of 12% and 22% respectively.

The survey had 34 questions. The survey was split into four sections with questions about the organisation, the services provided, customers served, and an optional section on views on regulation. This section was optional because the main focus of the survey was to understand the types of organisation that had been granted ABS licences, meaning the bulk of the survey questions were focussed on these areas. 51 respondents opted to complete the optional section. Of these 40 were regulated by the SRA and 11 by the CLC. When applied to the population of ABS licence holders, this gives a margin of error for these responses of 13% for the SRA and 25% for the CLC, at a 95% confidence level.

Please see annex 2 for a summary of responses.

**Surveys of individual consumers legal needs**

A limitation of this analysis is that because time series data is only available for solicitors we do not know to what extent change is driven by other types of un-regulated legal service providers being substituted for demand for regulated services, and solicitors firms responding to these changes. To ensure this aspect is not entirely overlooked, each segment summary includes data from consumer surveys to map out the proportion of consumers using alternatives to a solicitor in each of the different market segments.

For individual consumers we use the findings from the 2012 Legal Benchmarking Survey commissioned by the LSB. This is a survey of individual consumers’ experience of and response to legal problems. This constitutes a sample of 4,017 individual adults in the UK, online survey carried out between 5-16 January 2012. This covers the 2009-2011 period.\(^{22}\) We also refer to the findings of the 2006-2009 Civil and Social Justice survey\(^{23}\) as a way of understanding how these responses have changed over time.

**Survey of small business consumers legal needs**

For small business consumers we use the findings of the 2012 survey of small business consumers’ experience of and response to legal problems. This used a sample of 9,703 small business owners or managers in England and Wales. This was conducted online in December 2012 and covers the preceding twelve months.\(^{24}\)

To give context to the usage of different types of supplier, this survey found that in the preceding twelve months, 15% of small businesses had obtained formal help from a solicitors

\(^{21}\) We can be 95% confident that all ABS licence holders would fall into a range of +/- 9.82%. This is our confidence interval for the 60 full responses. Where we have 64 responses this interval falls slightly to 9.44%. For simplicity we assume a margin of error +/- 10%.

\(^{22}\) See [https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf)


\(^{24}\) See In Need of Advice? Findings of a small business legal needs benchmarking survey 2013, [https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf)
firm, 3% from a licensed conveyancer, 2% from a barrister, 2% from a patent or trademark attorney or agent and 7% from other legal service providers.25

**Review of publicised innovations**

In light of limited empirical information on innovation in legal services, we undertook a review of publicised innovation over the past three years. We reviewed a range of press articles on innovations from the 2010/11 to 2012/13 period. These articles were published by Legal Futures, the Gazette, the Lawyer, the Solicitors Journal, Legal Week, the Times, the Financial Times, the Guardian, City AM, and the Manchester Evening News.

We recognise that where innovations are being used to develop competitive advantage over rivals, the likelihood is that the innovator will keep the innovation hidden for as long as possible. However, no other proxy indicators of changes in innovation are available – for example investment in technology, or information on research and development roles within firms.

We recognise that this approach has limitations – most notably that an innovator has an incentive to overstate the value of the innovation and its level of innovativeness as a way of promoting their services. To counter this we restrict our analysis to classifying the type and frequency of reported innovations and do not seek to describe levels of innovation. We classify publicised innovations using the approach set out by UNESCO in 2009, with each publicised innovation being classified as an example of product or service innovation, process innovation, marketing innovation, or organisational innovation.

This approach may also favour firms that are likely to attract media attention, which might mean a bias towards larger firms. However, the review of press articles picked up 30 examples of reported innovations from non ABS SRA regulated firms, who were also outside of the top 100 largest solicitor firms.

---

26 Measuring innovation, UNESCO Institute for Statistics 2009
Part 1: What is the geography of market segments?

2. How has market share changed?
3. How has the structure of firms changed?
4. How has the level of innovation changed?

Overview

This section sets out the geographical boundaries for each of the different market segments. Our starting assumption is that there are no geographical boundaries to the supply of and demand for legal services, and we should consider all market segments to have national boundaries. This section reviews a range of evidence to test this assumption and concludes that all market segments can be considered to be national when looking at the supply side.
Part 1: What is the geography of market segments?

Background

1.1 Because we are seeking to determine how the level of competition has changed by analysing firm data, we need to determine the geographical boundaries of each market segment – the fourth dimension to the Oxera framework. Market definition requires consideration of the geographical extent of the market, and in legal services it has been argued in the past that the nature of the service being provided in the legal market means markets are local.\(^{27}\) The geographical boundary of each segment is to some extent arbitrary – being simplified here as local or national because of data availability – but our hypothesis and assumptions are formed on evidence from a variety of sources discussed below. Our main focus here is on solicitors, because of the lack of data on other regulated entities and the fact that this group of firms represent the largest proportion of the market.

1.2 The Oxera framework segments the market along the lines of demand side substitution but recognises there will be a geographic dimension to this. The Competition Commission defines a market as a "collection of goods and services, geographic areas (and sometimes also groups of customers or common delivery times), connected by a process of competition. The process is one in which firms seek to win customers’ business over time by improving their portfolios of products and the terms on which these are offered, so as to increase demand for the products. The willingness of customers to switch to other products is the driving force of competition. The boundaries of a product market therefore principally depend on the degree of demand substitutability between products".\(^{28}\) The actions of the buyers and sellers in the market determine the prices paid.

1.3 Geographic markets may be based on the location of either suppliers or customers. In the case of the former, the geographic market is an area covering a set of firms or outlets which compete closely because enough customers consider them substitutes – one solicitor in place of another, for example. In the latter case, a geographic market is an aggregation of customers paying individual prices but enjoying similar purchasing choices – the delivery of services via the internet or telephone for example.

1.4 To put it another way is a solicitors’ firm with an office in Aberystwyth really in competition with a solicitors’ firm in Great Yarmouth? If the consumer can perceive them as alternative providers then the answer is yes, even if the business decisions of each firm are made without reference to the other and they are located hundreds of miles apart at different sides of the country. This might be because the firm in Aberystwyth offers services online, has branches in various parts of the country, or a nationally recognised brand, for example.

Hypothesis

1.5 We can conceive of two possible geographical boundaries for national legal services markets along a range of size:

---


Part 1: What is the geography of market segments?

a National – there is one geographical market for each type of consumer and problem interaction. Therefore, each provider is competing for each customer regardless of location.

b Local – each transaction is so determined by local factors, such as variation in local processes, and a necessity of face-to-face interaction. This means that only providers with a local presence are competing for each customer.

1.6 This analysis specifically excludes international markets, and Scotland and Northern Ireland, as English and Welsh legal regulation is limited to these geographic borders and data is highly limited on UK involvement in other markets. However, the Law Society have undertaken a detailed analysis of exports of legal services by solicitors firms, showing growth in exports over time, and the City UK report the UK as the largest legal market in Europe, accounting for a fifth of all European fee income.

1.7 These are boundaries in that they represent the furthest extent of the market, the aggregation of all transactions and not any single transaction. They are determined by the interaction of supply and demand, and so cover consumer and provider behaviour. Therefore, our starting assumption is that all markets are potentially national. We think this is a reasonable assumption because:

- There are no direct regulatory barriers to offering legal services to any part of the country;
- Qualification as a solicitor allows an individual to deliver reserved legal activities across England and Wales, with the main body of law being set nationally with limited local variation in the shape of byelaws and through the localism and devolution agendas;
- Technology has meant consumers are more used to buying services remotely, relying less on face-to-face delivery of a range of services including recruitment and banking. For example, some portion of the £2.9bn exports of legal services in 2010/11 will have been delivered remotely;
- Providers will travel to client’s locations to provide services in some circumstances. For example, the Law Society website section on using a solicitor states that solicitors ‘should be happy to visit you at home’.

1.8 A recent survey of solicitors firms found that while solicitors mainly provide local services (where local was defined as within the same government office region) in all categories of law firms some clients are drawn from outside their region. This is

---

29 Net exports of legal services from the UK have increased substantially since 1995 and have been growing faster relative to other professional services - The Legal Services Industry: Part 1 - An Overview, The Law Society –2013
31 Byelaws are laws made by a local authority, using its powers conferred by statute, to control specific activities in parts of, or all of, the area of the Local Authority, travel and environmental authorities. A byelaw must be confirmed by the appropriate Secretary of State for it to be properly made. Breaches of byelaws are prosecuted in Magistrates Courts, with punishments normally being a fine.
32 For example the Localism Act 2011
33 Based on the rate of closure of banks and recruitment companies in town centres in the UK - http://www.bbc.co.uk/news/business-21611772
35 http://www.lawsociety.org.uk/for-the-public/using-a-solicitor/
36 https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf
shown in figure 5 below. Further, a survey in 2007 reported that 70% of solicitors’ legal aid firms provided services wider than their local neighbourhood.37

1.9 Looking beyond solicitors firms, 2008 analysis of travel patterns of self employed barristers in delivering family legal aid advocacy identified key travel routes of counsel, with London being the main hub and key routes were Birmingham to Herefordshire and Worcester, Greater Nottingham to Lincoln, Bristol to Gloucester, Chester to North Wales, Manchester to West Lancashire and Devon to Cornwall.38 Further, BSB data in 2011 shows that 67% of all self employed barristers were based in the south eastern circuit39, up from 42% in 1991.40

1.10 The growth in concentration of self employed barristers in the south east supports an assumption of barristers travelling to deliver services in other parts of the country. Indeed, as the website for the western circuit states “The London chambers represent the majority of the membership of the Circuit illustrating the continuing and enduring itinerancy of the barristers’ life”41. This supports an assumption of broad geographic markets for legal services, even where attendance at a physical location is required for service delivery.

Figure 5. Solicitors mainly provide ‘local’ services, where local is defined as regional42

<table>
<thead>
<tr>
<th>Area of work</th>
<th>0-49% of clients are local</th>
<th>50-89% of clients are local</th>
<th>90%+ of clients are local</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime</td>
<td>6%</td>
<td>24%</td>
<td>70%</td>
</tr>
<tr>
<td>Personal injury</td>
<td>23%</td>
<td>33%</td>
<td>45%</td>
</tr>
<tr>
<td>Wills, trusts and</td>
<td>7%</td>
<td>29%</td>
<td>64%</td>
</tr>
<tr>
<td>Family</td>
<td>6%</td>
<td>26%</td>
<td>68%</td>
</tr>
<tr>
<td>Property/planning</td>
<td>7%</td>
<td>32%</td>
<td>61%</td>
</tr>
<tr>
<td>Employment</td>
<td>15%</td>
<td>34%</td>
<td>51%</td>
</tr>
<tr>
<td>Immigration</td>
<td>14%</td>
<td>42%</td>
<td>44%</td>
</tr>
<tr>
<td>Commercial/Corporate</td>
<td>25%</td>
<td>41%</td>
<td>35%</td>
</tr>
<tr>
<td>Debt collection</td>
<td>21%</td>
<td>32%</td>
<td>47%</td>
</tr>
</tbody>
</table>

1.11 With regard to new business structures, in a survey of ABS licence holders regulated by the SRA and the CLC,43 while the majority of customers were from local areas, 80% of respondents indicated they drew customers from across the country even though 73% of respondents only had offices in one region.44

37 Findings from the Legal Advice Sector Workforce Surveys, Legal Services Research Centre 2007
38 Self-Employed Family Counsel Travel Patterns Legal Services Commission 2008
39 Figure 63: Circuit Breakdown, Bar Barometer, Bar Standards Board 2012, https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf
40 Table III. Barristers registered with the court Circuits in England and Wales, 1991, Barristers and the growth of local justice in England and Wales Mark Blacksell and Charles Fussell, University of Plymouth, 1994
41 http://www.westerncircuit.org.uk/
42 Table A.2 https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf
43 Online survey of all ABS licence holders with a 33% response rate, with results having a +/-10% margin of error when applied to the population. Please see annex 2 for a summary of responses.
44 Questions 9 and 10. Please see annex 2 for a summary of responses.
1.12 However, we recognise that there are circumstances where markets will not in practice be national, arising from situations where:

- the delivery of the service requires significant interaction with third parties – police, courts, tribunals, for example – that means physical representation by the solicitor is a necessary part of the service;
- large funders of legal services procure services on a geographical basis;
- channels to potential customers operate on a geographical basis, effectively excluding customers from certain geographic areas;
- business practices, such as franchising arrangements, have the effect of imposing geographical boundaries;
- consumer buying behaviour has the effect of imposing geographical boundaries on markets, for example through an overriding preference for face-to-face or local services and providers.

1.13 We review what available information tells us about each of these factors below, and conclude with a segment-by-segment assessment of the assumed geographical boundaries.

**Interaction of demand and supply: prices**

1.14 Since the boundaries of a market are determined by the interactions of the buyer and seller, one way to look for geographic boundaries arising because of the interplay of the factors above is through price variation by geographic area. We have highlighted the lack of price information in previous analysis. Published data relates to hourly rates and does not allow for comparison between different geographic locations beyond arbitrary administrative boundaries such as London and outside of London. Traditionally, publicly funded work and guideline hourly rates have included a London uplift to account for assumed higher costs in London. Legal aid reforms implemented in 2008/09 introduced variations in administratively set fees paid on a supra-regional basis (London and the South, North, Midlands, Wales) in family representation work, and by over 100 different geographic areas for police station work. These were largely based on differences in historical costs data associated with each area but also reflect what was practical in terms of managing legal aid procurement.

1.15 A large-scale individual consumer legal need survey undertaken in 2012/13 collected information on prices paid for a small sample of respondents in conveyancing, divorce, and probate who had taken advice on these types of problems in the preceding 12 months. The survey also collected demographic data showing consumer location at regional levels. The survey responses show large variations in prices paid within and across regional areas, even accounting for the different stage reached in cases. However, the main limitation with this data is that it is missing where the provider of the service was based. This does not help us establish geographical boundaries to markets, but confirms that price variation does exist.

---


47 What was the total cost of the service (including VAT)? If the need is on-going, tick the box which is closest to what you think it might be. An estimate of the cost is fine. [https://research.legalservicesboard.org.uk/wp-content/media/2012-individual-consumers-legal-needs-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/2012-individual-consumers-legal-needs-report.pdf)
1.16 However, we can use price comparison websites to determine prices for conveyancing services. Furthermore, we can control for variation in service by specifying a tightly defined transaction. A mystery shopping exercise of price comparison websites undertaken by the Legal Services Consumer Panel (LSCP) in 2012/13\(^48\), reported significant variations in prices. Using a simple will writing and conveyancing scenario, they reported “fixed fees for the will scenario on Legalcompare.com ranged from £20-£150 and for the conveyancing scenario £229-£1,250”\(^49\).

**Figure 6. Distribution of conveyancing prices**\(^50\)

1.17 We repeated this exercise in April 2013 looking solely at conveyancing services. Our focus on conveyancing was primarily driven by the ease of accessing price information. However, it is also an area where regulation means only solicitors, notaries, and licensed conveyancers can undertake the contracts for the sale of land.\(^51\) We collected quotes via seven different price comparison websites for the same hypothetical service – the sale of a freehold house located in London at the value of £325k. Each site requested property and customer location information as

---


\(^{50}\) Distribution of conveyancing prices for the sale of a London freehold property valued at £325k - online prices quoted including VAT and disbursements April 2013, n=180. HMRC records show there were 799k residential property transactions in England and Wales in 2011/12.

\(^{51}\) See slide 191, Legal Services Part 3 – Key Markets, Law Society, July 2013
Part 1: What is the geography of market segments?

1.18 The range of prices for the same transaction is very broad – with a maximum price of £1,062 (from a firm based in Yorkshire) and a minimum price of £263 (also from a firm based in Yorkshire). This gives a range of £799, similar to the LSCP investigation. However, median prices are far closer across regions with a range of just £272. Based on these figures, the most expensive region for conveyancing is East Midlands (£750), followed by London (£734), the South East (£720), West Midlands (£654), and the South West (£636). The least expensive regions were North East (£478), Yorkshire/Humberside (£510), North West (£511), East Anglia (£537), and Wales (£594). Merseyside is mid-priced at (£605). This shows different prices by looking across regions and the variation in price is just as large within regions. One interpretation of this might be that there could be very tightly defined geographical markets within these regions, which result in these observed differences in prices. However looking at prices within the same city or town also shows large variations, shown in figure 8, below. While the small number of observations invites caution, this variation within such narrow geographical areas suggests that this variation is not caused by any local issues, but by other factors.

Figure 7. Big variation: regional spread and median conveyancing prices

1.19 Given that these quotes are for the same specified level of service, the differences in prices could be driven by a range of firm based factors – such as the level of reliance on personal recommendations compared to use of price comparison sites. Anecdotaly, it is believed that the variation in these prices is driven in part by levels

---

52 Regional spread of conveyancing prices showing median price for the sale of a London freehold property valued at £325k- online prices quoted including VAT and disbursements April 2013, n=180.
of under utilisation at these firms. Where a business has large fixed costs – those that don’t vary by level of activity eg salaries and premises - and low additional costs of undertaking new cases there is an incentive on firms to use the spare capacity in the short term, by attracting business through lowering prices. Price comparison websites make prices visible to competitors as well as consumers, meaning a provider can monitor changes in prices among competitors and respond accordingly.

**Figure 8. Conveyancing in London? Go to Newport**

1.20 Clearly where there are differences between an original quote and final price, these can give rise to complaints as reported by the Legal Ombudsman.\(^{53}\) Residential conveyancing is the second most commonly used legal service by individuals. It also represents the second most complained about area of law to the Ombudsman. However, complaints about the cost of conveyancing made up just 7% of all complaints about conveyancing.\(^{54}\)

1.21 More importantly, for the individual consumer of these services each supplier is effectively a substitute for another – they have a choice – demonstrating there is a national market for conveyancing services for individual consumers. Research by the Law Society shows a limitation of price comparison websites is consumers’ ability to compare providers on the basis of quality.\(^{55}\) Because of the limited use of price comparison websites at present, we - and consumers - do not have access to similar data for other categories of law so we will need to adapt our approach and look at the

---


\(^{54}\) http://www.legalombudsman.org.uk/research-decisions/Complaints%20data/2012-13-pdf-versions/What_were_the_complaints_about.pdf

\(^{55}\) Applying the comparison web site model to legal services, The Law Society, 2011 http://www.lawsociety.org.uk/representation/research-trends/research-publications/applying-the-comparison-web-site-model-to-legal-services/
other market segments through analysing consumer behaviour and reported provider views.

Demand: individual consumers advice seeking behaviour

1.22 We look at individual consumers because of an assumption that they are less sophisticated in their purchasing behaviour for legal services when compared to businesses and government. A geographic study in 2010 reported the views of solicitors that face-to-face contact with a legal adviser was most valuable for "cases involving highly distressed consumers (typically in family law), consumers with communication problems (eg where a client has poor English), consumers with some degree of mental impairment (eg certain elderly clients), consumers who lack IT literacy (frequently reference was made to elderly clients), the consumer attending court". Face-to-face contact with a legal adviser was described as not necessary for personal injury, will writing, conveyancing, and simple legal issues.

1.23 Consumer advice seeking behaviour, which is observable using consumer surveys, gives insight into whether or not consumers’ behaviour suggests geographic limits to legal service markets. Answering this involves:
- identifying which consumers we are considering,
- analysing how they choose a provider,
- looking at what factors they consider important in making a choice, and
- how the service is actually delivered to them.

1.24 We do this by looking at consumers who have sought advice, consumers who have sought advice from a solicitor and from non-solicitors, and how customers of solicitors chose their provider.

1.25 By considering consumers who have sought advice, we automatically exclude certain groups of individuals. Legal need research shows that individual consumers on lower incomes are more likely to take no action or handle alone rather than seek advice in response to a legal problem. Further, consumers who do use legal services are not homogeneous. Factors such as gender and ethnicity have been shown to be less important in legal services, with issues such as housing tenure, parental responsibility, and age being more likely to be important in describing consumer experience of and response to legal problems.

1.26 Additionally, by considering individual consumers who have used solicitors firms, we further exclude certain consumers. Using data from the 2012 individual consumer’s survey to identify the differences between the customers of solicitors and the customers of other types of legal service provider. That survey looked at consumers of legal services over the past three years – before changes to litigation funding and the scope of legal aid were introduced. Looking at statistically significant individual differences between the two groups shows that solicitors’ customers.

56 What will be the impact of ABS on geographic access to justice Part 1, Oxera, The Law Society 2010
59 The survey data is available on the LSB website: https://research.legalservicesboard.org.uk/news/data-sources/. A copy of the report can be found here https://research.legalservicesboard.org.uk/wp-content/media/2012-individual-consumers-legal-needs-report.pdf
60 Z tests, 95% confidence level – we can be 95% confident that the differences are not due to chance. We use these tests to see whether the two different groups differ significantly on the specified single categorical
Part 1: What is the geography of market segments?

- are more likely to go to local businesses compared to customers of non-solicitor legal businesses;
- are more likely to pay for the service, and less likely to access the service for free, giving rise to an expectation that they will be more active in their choice of provider;
- are more likely to have a household income of £50k or more, and have stayed in education until aged 20 or older;
- are more likely to be divorced or separated, but less likely to be single;
- are more likely to own their own home outright, or with a mortgage;
- are more likely to be British than customers of other legal service providers;
- are also more likely to be retired or working than customers of other legal service providers.

1.27 Clearly some of these differences are driven by the types of problems individual consumers face and the services that are on offer from solicitors firms in comparison to other legal service providers – take the dominance, for example, of not for profit agencies in the provision of advice services for free in relation to debt and housing benefits. However, the fact that there was little variation across regions, suggests the limited relevance of location in response to legal problems and choice of provider.

1.28 So having chosen to use the services of a solicitor, how do individual consumers choose which one to formally instruct? To start with, research shows a significant proportion of individual consumers had a provider allocated to them, most likely because of the funding method used, or a particular referral network. These figures, shown in figure 9, might suggest that in a large number of cases active choosing of a provider is limited, meaning funders and introducers, rather than individual consumers determine any geographical boundaries. In the past, legal aid contracts have applied limitations on the proportion of work that can be done for consumers outside a specified geographic area in specific categories of law.62 The high prevalence of the provider contacting the consumer in crime defence legal services is most likely driven by the duty solicitor arrangements in police stations. Here legal aid contracts are allocated on a scheme-by-scheme basis, though consumers also have the right to choose their own solicitor. However, in personal injury where referral networks have been most active in the past63, there appears to be greater use of non face-to-face service delivery methods.64

---

61 We use the term customers to reinforce the fact that these are consumers or clients or citizens who have used a solicitor’s service in the past 3 years.
62 These were designed to ensure that providers had a permanent physical presence in the specified geographical area. For the 2010-2013 contracts, limits were no more than 40% of work in actions against the police, clinical negligence, consumer, education, and personal injury; no more than 30% for mental health; and no more than 10% for immigration. There were no limits in other civil categories.
63 See paragraph D.12.21 https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf
64 See www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/10%20Highlights.pdf
1.29 Previously knowing the provider or having a friend or relative recommend a provider dominated how consumers choose a provider. In conveyancing, for example, only 18% of consumers undertook any kind of search activity – via the internet or using an advertisement – with previous use and friends or family recommendations accounting for 70% of all purchases. For businesses, recommendations can be powerful as they increase the chance of being able to charge a premium without customers looking elsewhere. Recommendations from friends or family can serve as vicarious experience for consumers, building a reputation with positive effect for the provider: “Once a reputation is established, a higher quality provider will be able to charge a higher price for service, and still expect to attract customers. On the other hand, customers will not be willing to buy from low quality providers, or from those lacking a reputation one way or the other, at the higher price; a process that has been called direct exclusion.” 65 Other research shows that many consumers put a trusted relationship – built by previous positive experience or recommendation from a friend or family member – above specialist experience or qualifications. 66 However, consumers are not homogenous so we need to look at what might drive different behaviours.

---


1.30 Research applying behavioural economics to legal services suggests that the context in which the consumer is making a choice between different providers will affect the decision made in three ways:

- Complexity – Having too many suppliers to choose from increases the likelihood that a person defers the decision to someone else, and will reduce satisfaction and confidence in their choice.
- Similarity – Having to chose between two different providers, one higher cost and better reputation than the other, gives rise to a cost /value trade off incentivising the consumer to search for more options.
- Compromise – Finding a third provider with a higher cost and better reputation, is likely to result in the mid placed provider being chosen.

1.31 The complexity of comparing one solicitors firm with another – driven by limited price advertising, ‘solicitor’ rather than firm branding, allocation of scarce consumer time, and the potentially enhanced emotional position of the consumer - is likely to drive the prevalence of ‘deferred’ choice across the market segments. To better understand how these drivers of consumer choice of provider might shape the geographic limits of markets, our analysis splits these solicitors customers into two groups:

- Solicitors’ customers who actively search for their provider – ‘Searchers’
- Solicitors’ customers who default to previous use and recommendations – ‘Reliants’

1.32 We make this distinction on the assumption that consumers who make a choice to actively search for a provider, perhaps because they have no experience of using one previously, may behave differently to those that use the same provider as before, or who rely on the recommendations of friends and relatives. Behavioural economics distinguishes between system 1 and system 2 thinking. System 1 is quick, intuitive and requires little mental effort, while system 2 is analytical, deliberative, and requires a good deal of mental effort. We can speculate that the behaviour of Reliants shows traits of system 1 thinking in their choice of provider, and Searchers behaviour shows traits of system 2 thinking.

1.33 There were no significant differences in solicitors’ customers’ who make an active search for a provider and those who rely on recommendations, in terms of working status, ethnicity, or education. However, there were significant differences in terms of home ownership, marital status, funding sources and type of firm used, as shown in figure 10 below. As a group, Reliants were significantly less likely to rent their own home and more likely to own their own home with no mortgage. This also shows that more customers who have the service provided free make an active search for a provider – 27% of Searchers compared with 22% of Reliants. This might point to the operation of direct exclusion for privately paying consumers or be a result of the difficulties in actually comparing providers when paying on a private basis. However,

---


68 To make a distinction between the two groups, we define a default choice as using the provider who contacted them, a provider they had used in the past, or who was recommended to them by friends or family, or their Trade Union. An active search is defined as searching for providers via the internet, advertisements or leaflets, or ‘walking in off the street’.

customers on the highest incomes are more likely to actively search, and customers on the lowest incomes are less likely to do so. Making an active search was also associated with less use of local solicitors firms and greater use of regional solicitors firms.

1.34 Turning to the main factor in choosing a solicitor, the most important factor for choosing across all market segments is reputation of provider and their area of specialism, as is shown in figure 11 below. Perceived reputation is not geographically bound, nor is specialism, pointing to negligible impacts on the geographical boundaries of markets. However, looking at the differences between solicitors’ customers who search or rely on others there are significant differences between what is the most important factor in making the choice of provider. For 30% of those who actively choose, the most important factor is the distance from where they live and the convenience of where the provider is located. For those customers who rely on others, the previous use of a provider is the most important factor (24%), with distance and convenience of location coming next (17%).

1.35 Furthermore, for these customers, cost is only the most important factor for 6%, compared to 16% for those making an active choice. This points to the possible operation of direct exclusion with the consumer trading convenience and price for reputation because of a previous positive experience or expectation. It also suggests that shopping around is done on both location and price, as would be reasonable to expect.

1.36 A preference for face-to-face delivery could feasibly have the effect of introducing a narrower geographical area – given the time and costs involved of travelling to a physical location for the delivery of the service. Available data does not show any difference in preference for service delivery between the two groups of consumers. There is no significant difference in:

- how they make first contact – face-to-face 34% searchers, 30% reliants, and via email, internet, post, or telephone 65% searchers and 69% reliants;
- how they mainly communicate during the case – face-to-face 40% searchers and 40% reliants; via, email, internet, post or telephone 60% reliants and 59% searchers;
- whether they have an initial face-to-face meeting - 72% reliants, 73% searchers;
- the form of communication mainly used by the provider - via email internet post or telephone 54% reliants and 50% searchers;
- or the stated preference for preferred form of communication - via email, internet, post, or telephone 53% reliants and 51% searchers.
Part 1: What is the geography of market segments?

Figure 10. Free-active? – statistically significant differences between solicitors’ customers who actively choose providers and those who rely on recommendations

![Figure 10](image)

Figure 11. What is important? ‘Specialism’ the main factor in the choice of solicitor

![Figure 11](image)
1.37 How much of this is driven by what is on offer rather than what consumers want is an important question. Research in 2012 suggests solicitors firms are more traditional in their delivery of services, at least in some areas.\(^{70}\) Take for example the findings of the individual consumer survey comparing type of organisation: “Face-to-face contact was least likely to occur where the legal provider was a local authority (48%) and most likely where solicitors provided the service (71%)“.\(^{71}\) For small business consumers, research found variation in forms of communication between different service providers: “40.2% of small businesses mainly communicated with solicitors in person, the figure was 28.4% for licensed conveyancers, 25.1% for patent/trademark attorneys/agents and 19.9% for ‘other’ legal services. Solicitors were also well represented at the other end of the technology scale. 19.1% of small businesses communicated with their solicitors mainly by email, only just fewer than patent/trademark attorneys/agents (19.6%) and ‘other’ legal services (21.4%). The telephone was also a relatively common form of communication with solicitors firms (28.2%), with only ‘other’ legal services (30.2%) and, obviously, telephone helplines registering higher.”\(^{72}\)

1.38 Qualitative research undertaken by YouGov showed that individual consumers who had experienced a poor service valued face-to-face delivery. They saw face-to-face contact as a way of preventing poor service because it would have provided the opportunity to have the personal contact needed to explain their case and get their points across.\(^{73}\) This might reinforce a perception that because of the way services have been provided in the past, face-to-face meetings are deemed necessary by consumers to minimise the risk of something going wrong.

1.39 The traditional face-to-face services offered by solicitors were perceived as expensive and time consuming by some small business consumers in qualitative research in 2010/11\(^{74}\), pointing to a preference for more efficient methods of delivery. It might be argued that because solicitors are providing a different service, face-to-face contact is more important. However, analysis of consumer use of different legal advisers challenges that argument – with solicitors being used for information and practical support as frequently as Citizens Advice Bureaux, for example.\(^{75}\) At a national level, for individual consumers of solicitors services, only 8% of cases involved representation in court or tribunal, and 21% involved assistance with mediation or dispute resolution. For small business consumers of legal services, the use of any formal legal adviser increases the likelihood of the problem resolution involving a court or tribunal hearing, but reduces the likelihood of using mediation or online dispute resolution.\(^{76}\)

1.40 We recognise that other types of consumer will have different preferences. For example, City solicitors firms highlighted the importance to their clients of them

\(^{70}\) See Figure 11, \(https://research.legalservicesboard.org.uk/wp-content/media/Probate-and-Estate-management-survey-report-2012.pdf\)
\(^{71}\) See \(https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf\)
\(^{72}\) See In Need of Advice? Findings of a small business legal needs benchmarking survey 2013, \(https://research.legalservicesboard.org.uk/reports\)
\(^{74}\) See \(https://research.legalservicesboard.org.uk/wp-content/media/20111-Small-Business-legal-needs.pdf\)
\(^{75}\) See Figure 3 \(https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Baseline-report.pdf\)
\(^{76}\) Section 5, In need of advice? – Findings of a Small Business Legal Needs Benchmarking Survey \(https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf\)
having an office in London in one study\textsuperscript{77}, but do not expect all services to be delivered face to face. In terms of the value of legal services, business consumers have been estimated to account for over 70\% of the market value, with the share for individual consumers having fallen since 2007.\textsuperscript{78} However, the 2012 survey of solicitors firms shows that that 93\% of solicitors firms provider some services to individual private consumers, compared to just 30\% providing services to large businesses and government, as shown in figure 12. Further, for 30\% of solicitors firm’s private individual consumers represent 90\% or more of their customers. Given the sheer volume of individuals compared to business – 50m adults in the UK compared to 4.8m businesses – this is not surprising even accounting for the higher problem incidence rate among businesses.\textsuperscript{79}

**Figure 12. Consumer market segments served by solicitors firms by main categories of consumers and by any type of consumers**

![Chart showing market segments served by solicitors firms](image)

### Supply: solicitors’ perspectives

1.41 Recent research points to solicitors being seen as high quality and high cost.\textsuperscript{80} If some solicitors firms consciously operate in the high cost market space, perhaps justified by linking this service to high quality, they are effectively excluding the significant majority of potential consumers from their services, leaving these consumers to be serviced by other competitors, regardless of geographic location.

---


\textsuperscript{78} Estimated work for businesses and retail work, Slide 12, Legal Services Part 3 Key Markets, The Law Society July 2013

\textsuperscript{79} See slide 6, [https://research.legalservicesboard.org.uk/wp-content/media/Presentation.pdf](https://research.legalservicesboard.org.uk/wp-content/media/Presentation.pdf)

\textsuperscript{80} [http://www.lag.org.uk/magazine/2013/05/changing-times-understanding-consumers-needs-from-legal-services.aspx](http://www.lag.org.uk/magazine/2013/05/changing-times-understanding-consumers-needs-from-legal-services.aspx)
1.42 As shown in figure 5 above, a recent survey of solicitors firms found a dominance of local clients – where local was defined as within the same government office region - pointing to providers working along regional boundaries. In all categories of law, the majority of firms drew 50% or more of their clients from the region. Only in the personal injury and commercial/corporate categories of law do a substantial proportion of firms draw clients from outside their region.

1.43 However, the research also noted that: “The proportion of local clients was related to productivity, with productivity significantly smaller for firms with 50-89% of local clients when compared to those with 0-49%. ....... compared to those with 0-49% local clients, those with 50-59% local clients had around 12% lower productivity. Moreover, having 20% or more clients from outside England and Wales was associated with significant higher productivity, equating to around 26% higher productivity compared to other firms (again referring to the statistical model terms)”.

This points to a link between productivity and less face-to-face delivery of services – suggesting the potential for wider geographical boundaries of markets. If it is more productive to deliver services more broadly, then why might firms operate in this way?

1.44 The Law Society has been described as a ‘super brand’. It has run collective advertising campaigns run for the past five years, such as ‘Choose quality advice’ in 2011, or ‘Ask a solicitor’ in 2012, and ‘don’t get mugged by an insurer’ in 2013, are targeted at consumers who do have a legal problem but might not use a solicitor. These seek to expand the existing demand. These do not distinguish between different types of solicitors firms, but provide a list of contact details for solicitors to develop their own advertisements in regional press. The 2011/12 Your Law Society report states that over a hundred firms took advantage of this, but this is less than 2% of all firms. The 2012 survey shows that “64% of firms engaged in media advertising (including broadcast, print and online). Considering all firms, the most common form of advertising was via the Internet (54%), with local newspapers and magazines (30%) also popular”. Just 3% advertised nationally. Further, the Find a solicitor service directs users to local solicitors firms. However, this was used by just 13% of individuals who undertook an active search and found their provider via the internet compared to 75% for Google, between 2009 and 2011, though search engines will often tailor search results based on location.

1.45 As a means of getting customers, directly advertising services is only one approach. The emergence of a range of national legal brand franchises over the past four years, is likely to impose some form of geographical limits on where firms can offer services. This is to avoid franchisees competing with each other, as opposed to competing with firms who are not part of the franchise. The 2012 solicitors firms’ survey shows that 13% of firms were members of these networks and franchises. This research also found that a firm that uses media advertising was significantly associated with an increase in turnover. However, being a member of franchise or

---

81 See https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf
82 Here productivity is defined as turnover per fee earner, see page 27, A time of change: Solicitors firms in England & Wales 2013 https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf
83 See http://www.newlawjournal.co.uk/nlj/content/legal-superbrand
84 See http://www.lawsociety.org.uk/about-us/annual-review/
85 See https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf
86 See https://research.legalservicesboard.org.uk/wp-content/media/2012-individual-consumers-legal-needs-report.pdf
network was not associated with any likelihood of having seen an increase in turnover over the preceding three years.\textsuperscript{87}

1.46 Economic theory suggests three key benefits that arise from advertising that the Regulatory Policy Institute has identified as relevant in legal services.\textsuperscript{88} Advertising:
- assists consumers in making better informed decisions by providing relevant information "the messages will at least let consumers know that the relevant supplier exists and wants to be considered when the consumer is making purchase decisions";
- reduces search costs for consumers reducing the time spent investigating different services;
- acts as a way for providers to differentiate themselves, with consequent positive effects on innovation and market entry.

1.47 It is not unreasonable to assume that the combined impact of collective advertising, the use of regional and local media, and the limited awareness of individual firms brands among consumers, has the effect of imposing some form of information based geographical boundaries. This is especially true when the current difficulties of establishing and comparing services offered and prices are considered, even accounting for a growth in the internet as a tool for searching for a provider. This is even more so when the costs to the firm of establishing a national brand are factored in.\textsuperscript{89}

1.48 The perceptions of solicitors firms of who their main competitors are vary significantly by area of law as reported in the 2012 survey of solicitors firms. This is shown in figure 13 below. So for example in the immigration market segment local solicitors firms (25%), and non-solicitor providers (21%), were identified as the main source of competition. In the conveyancing market segment, regional and national firms are seen as a similar source of competition to local solicitors seen as (14% and 15%). The biggest contrasts are in the crime market segment where local solicitors are seen as the main source of competition (22%), and the injury market segment where regional and national solicitors are seen as the biggest source of competition (37%). Local firms are perceived as the main source of solicitor competition in the family segment, and regional and national firms as the main source of solicitor competition in the other market segment. While a national firm may have local offices, it is highly unlikely that they have an office in every locality, so we infer from this that from the perspective of the survey respondent the national firm is a competitor from out of the area. The highest number of offices reported by a solicitor firm in 2012 was 19, but the mean average was just 1.4\textsuperscript{90}, supporting this assumption.

\textsuperscript{89} See section 4 - http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ChooseUse_Phasel1report.pdf
\textsuperscript{90} Reported by respondents in 2012 Joint LSB/ Law Society/ Ministry of Justice Survey of Solicitors Firms, https://research.legalservicesboard.org.uk/reports/measuring-the-impacts-of-reform/
Part 1: What is the geography of market segments?

Figure 13. Contested consumers? Solicitors firms views on the sources of competition by main\(^91\) market segment

Conclusion: The assumed geographical boundaries

1.49 Returning to our original hypothesis, there are no regulatory barriers to firms across the country being considered as alternatives by consumers. Therefore, a starting assumption of national markets seems reasonable, with the absence of any obvious regulatory or geographic boundaries supporting this assumption. Any boundaries are driven by the behaviour of consumers and providers. We assume that as consumers become more sophisticated geographical boundaries widen, with location of the provider becoming less important.

1.50 Where price data is available, prices do vary but not along clear geographical boundaries. Technology means there are few cost issues associated with the delivery of services via non face-to-face methods, except for occasions where physical presence is demand by a third party – such as in court. Based on our analysis above, we concluded that in some circumstances consumers are willing to trade convenience of location for perceived quality of provider. However, in practice, consumers do not appear to have the information available to be aware of different service offerings and then to be able compare what is on offer. This is in line with the

\(^{91}\) This uses data collected in the 2012 survey of solicitor firms: Question G1b: You said that competition for business has been a significant problem over the past 12 months, using the same scale to what extent have the following types of competition been a problem for your business in the past 12 months: Competition from local solicitors; Competition from regional/national solicitors; Competition from networks of solicitors; Competition from Alternative Business Structures (ABS) i.e firms offering legal and non-legal services; Competition from non-solicitor providers. Main market segment is defined here as accounting for 50% or more of their gross fee income in 2010/11 (question F9).
conclusions of the LSCP investigations into choice tools. In the market segmentation framework terms, this raises questions about effectively the market is functioning. At present reputation – based on the consumers’ own past experience or vicariously – can lead to direct exclusion with a positive incentive on providers to deliver high quality services.

1.51 Unless consumers become aware of other services, their price, and are reassured of their quality – for example though the reach that brands provide – this seems likely to continue. This has the effect of limiting the ability to compare service offerings and thereby narrowing the geographical boundary of markets. This is reinforced to some extent by the mainly regional advertising of services, even though firms in any part of the country will offer some services to an individual based somewhere else. The LSCP report that between 2011 and 2013 “levels of shopping around have remained the same at 22%. The degree of shopping around varies depending on the area of law and the data indicates this is increasing in some areas and decreasing in others. The figures should be seen in the context of market developments, e.g. shopping around in conveyancing can be expected to reduce if there are more mortgage deals including free legal work. The year-on-year rise in family law is salient given the rise in fixed fee deals in this area”. The LSCP reported the rise in the proportion of fixed fee deals in certain areas of law, most notably family (6% to 26%), probate (12% to 30%) and housing (19% to 29%).

1.52 As the regulators take forward work to develop transparent measures of quality, as recommended by the LSB in 2012, the ability to compare service offerings should be enhanced. Further, new organisations providing more services via the web is also likely to have the effect of widening geographical boundaries.

1.53 Taken together the findings of this range of research suggest that - over the past three years - the geographical boundaries of legal services markets are driven by informational boundaries. The delivery of services in some categories of law remains predominantly face-to-face. Further, a large proportion of consumers seem to have low levels of empowerment – they are guided by what services are on offer until they become aware of alternative offerings.

1.54 These barriers could be overcome through advertising on price, and the establishment of brands and advertising, making searching and comparing providers easier. This is not a new observation, with a number of new business models already taking this approach. So to answer the question is a solicitors firm in Aberystwyth really in competition with a solicitors firm in Great Yarmouth: if the consumer uses

---

92 See page 5

93 See page 2

94 See page 2

95 See page 10,

96 See

97 For example Co Op Legal Services advertising on fixed price services - http://www.legalfutures.co.uk/latest-news/co-op-launches-multi-million-legal-services-advertising-campaign
online resources for conveyancing than the answer is more likely to be yes, if they are looking for representation in a local Magistrates Court then the answer is more likely to be no depending on where a firm has offices or its willingness to travel.

1.55 Based on this analysis we make a broad judgement about the geography of each market segment and treat each one as a national. A summary of information is shown in figure 14 on the following pages. In reviewing this range of evidence to test the hypothesis, we conclude that all market segments can be considered to be national. We would welcome further data for analysis or research that could be used to refine these assumptions.
Part 1: What is the geography of market segments?

Figure 14. Market segment summary of available evidence on consumer behaviour

<table>
<thead>
<tr>
<th>Business affairs</th>
<th>Individual consumers using solicitors firms services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil liberties</td>
<td>Main choice factor: Reputation (50%)</td>
</tr>
<tr>
<td>Consumer</td>
<td>Main method of first contact: Email/internet, Post, Telephone (92%)</td>
</tr>
<tr>
<td></td>
<td>Main method of service delivery: Email/internet, Post, Telephone (58%)</td>
</tr>
<tr>
<td></td>
<td>Proportion of cases involving representation in court or tribunal: 25%</td>
</tr>
<tr>
<td></td>
<td>N/a</td>
</tr>
</tbody>
</table>

Where small businesses face these problems they use a mixture of communications methods, but face-to-face advice is seen as expensive and time consuming. Charities mentioned local solicitors use for other types of legal issue they face.

<table>
<thead>
<tr>
<th>Consumer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main choice factor: Reputation (46%)</td>
</tr>
<tr>
<td>Main method of first contact: Email/internet, Post, Telephone (67%)</td>
</tr>
<tr>
<td>Main method of service delivery: Email/internet, Post, Telephone (63%)</td>
</tr>
<tr>
<td>Proportion of cases involving representation in court or tribunal: 17%</td>
</tr>
<tr>
<td>N/a</td>
</tr>
</tbody>
</table>

182 Benchmarking Survey - [https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf)
193 2013 Small Business Benchmarking Survey - [https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf)
<table>
<thead>
<tr>
<th>Part 1: What is the geography of market segments?</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Conveyancing</strong></td>
<td><strong>Crime</strong></td>
</tr>
<tr>
<td>Main choice factor: Reputation (41%)</td>
<td>Main choice factor: Reputation (38%)</td>
</tr>
<tr>
<td>Main method of first contact: Email/internet, Post, Telephone (74%)</td>
<td>Main method of first contact: Face-to-face (60%)</td>
</tr>
<tr>
<td>Main method of service delivery: Email/internet, Post, Telephone (77%)</td>
<td>Main method of service delivery: Face-to-face (74%)</td>
</tr>
<tr>
<td>Most frequent use of solicitor services by charities is for the purchase of property (43% over 2010/11-2012/13). Assumption that providers are chosen based on price.</td>
<td>N/a</td>
</tr>
<tr>
<td>Assumption that commercial conveyancing services are purchased based on price and not geographical location.</td>
<td>N/a</td>
</tr>
<tr>
<td>Price comparison websites concentrate on conveyancing services, meaning services are accessible nationally.</td>
<td>The Legal Services Commission (LSC), now Legal Aid Agency, award contracts based on defined groups of police stations and magistrates courts (LAA). Anecdote suggests that providers travel across different areas, for example police station agents and junior self-employed barristers.</td>
</tr>
<tr>
<td>Market Segment</td>
<td>Main Choice Factor</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Immigration and nationality</td>
<td>Reputation (43%)</td>
</tr>
<tr>
<td>Injury</td>
<td>Reputation (51%)</td>
</tr>
<tr>
<td>IPR</td>
<td>N/a</td>
</tr>
<tr>
<td>Other – construction, planning</td>
<td>Reputation (37%)</td>
</tr>
<tr>
<td>Property, construction, planning</td>
<td>Reputation (49%)</td>
</tr>
</tbody>
</table>
### Part 1: What is the geography of market segments?

**Welfare and benefits**
- **Main choice factor:** Reputation (60%)
- **Main method of first contact:** Email/internet, Post, Telephone (68%)
- **Main method of service delivery:** Email/internet, Post, Telephone (62%)
- Proportion of cases involving representation in court or tribunal: 16%

**Prior to 2013,** the LSC funded legal aid contracts on the basis of defined geographical areas (procurement areas). A significant proportion of mental health work will require providers to travel to hospitals.

**Wills, trusts and probate**
- **Main choice factor:** Reputation (33%)
- **Main method of first contact:** Email/internet, Post, Telephone (61%)
- **Main method of service delivery:** Face-to-face (56%)
- Proportion of cases involving representation in court or tribunal: 3%

Research into consumers’ experience of will writing reported that 13% of respondents who considered using a solicitor chose not to because they were too far away (IFF Research[^100]). However, the LSCP investigation[^101] shows that price comparison websites operate in wills.

Part 2: How has market share changed?

3. How has the structure of firms changed?
4. How has the level of innovation changed?

Overview

This section considers how market shares have changed over time. It shows that while the overall number of firms has fallen over the past three years, the total market value has remained within +/-1% of its 2010/11 value. All market segments are characterised by low levels of overall concentration, especially the residential conveyancing and family market segments, but 1% of firms account for 51% of market share in total. The analysis shows limited changes in market concentration in any individual segment, with the exception of the injury segment. In that segment there have been higher rates of entry and exit than in other market segments. Market segments that have seen higher levels of change tend to be the low value market segments of civil liberties, consumer problems, and welfare and benefits where small value changes have a bigger impact. Overall the level of recorded new entrants is falling over time. At the aggregate level, the analysis finds that 49% of firms have seen at least a 1% increase in real turnover in the past three years, 51% have seen a reduction. This is reflected in aggregate productivity - measured by real turnover per fee earner – falling by 3% between 2010/11 and 2012/13.
Background

2.1 As part of determining how competition has changed in the different market segments, traditional supply side economic measures look at market share and market concentration. These are normally done through, a count of the number of providers, a simple market share percentage of the largest firms in the market, the Herfindahl–Hirschman index (HHI), the price-cost margin, and more recently the Logit Competition Index.\textsuperscript{102} These produce numerical measures of the level of competition in a market. How these change over time are proxy indicators for how competition is changing.

2.2 Our approach in this part of the analysis is to draw inferences from changes to these ratios over time, not to comment on the level of competition itself. The regulatory objective is to promote competition in the provision of services, not to get the market to a specific level of competition. The ratios used provide insight into how the market segment has changed over the past three years, but not the explanation as to why. While we seek to put some context around why these measures might have changed, we welcome others’ interpretations as to underlying factors. Research looking at the existence of barriers to entry, exit, and merger, for solicitors firms is due to be published later this year\textsuperscript{103} and its findings will be used to inform future analysis.

2.3 The market share approach is based on the theory that a firm with a high market share may have less incentive to compete vigorously with its rivals especially where there are barriers to entry.\textsuperscript{104} One important aspect here is how contestable the market is perceived to be. Provided that entry can happen, the benefits of greater competitive pressure can occur as existing providers respond to the threat of entry from potential new competitors.\textsuperscript{105} It is not unreasonable to speculate that the threat of new entrants arising from the LSA has driven the development of franchises for example. How this changes across market segments can help us understand whether there are any segment specific barriers to entry. Therefore we also consider changes in the number of firms entering and leaving the market.

2.4 We look at changes in productivity across the sector as a proxy for changes in the price-costs margin. We use this proxy due to a lack of data on prices and costs.\textsuperscript{106} As a proxy, we use the turnover per fee earner at each business as a measure of productivity. This allows some understanding of how the industry as a whole is performing, but is limited in allowing comparison between different firms as available data does not break this down by segment. Our measure of productivity is appropriate for use here because of the largely traditional partner based business we

\textsuperscript{102} See for example Measuring Competition, Boone et al 2005

For the Logit Competition Index see http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/private-healthcare-market-investigation/ais_app_b_toh_1_annex_2_loci_note_housestyled.pdf

\textsuperscript{103} Research being undertaken by the Regulatory Policy Institute, jointly funded by the Law Society and LSB.

\textsuperscript{104} See paragraphs 186-195 Competition Commission—Guidelines for market investigations: Their role, procedures, assessment and remedies April 2013 http://www.competition-commission.org.uk/assets/competitioncommission/docs/2013/publications/cc3_revised_.pdf

\textsuperscript{105} Ibid, paragraph 175.

\textsuperscript{106} For a review of information please see https://research.legalservicesboard.org.uk/analysis/supply/market-financials/salaries-costs/
are considering. In the future, we might want to consider a revised version of this measure if business models change to make greater use of capital and less use of fee earners. We do not explore the Logit Competition Index because the information necessary for its calculation is not available.

2.5 All these measures are interlinked. For example, when market shares have been stable over time, especially in the face of historical changes in prices or costs, high concentration may indicate that competition within the market is weak. However, a highly concentrated market may be competitive if market shares fluctuate over short periods in response to changes in competitive offers; such volatility may indicate the existence of effective competitive constraints, such as successful entry and innovation.

2.6 This analysis builds on part 1 of this investigation, with the assumptions about the geographical boundaries of markets relied upon here. part 3 considers how firms have changed their business structures.

**Market concentration across all market segments**

2.7 The table below presents a range of summary data on the solicitors’ legal market.\(^{107}\) A full segment-by-segment analysis is presented in annex 1. At the aggregate level, the 2010/11-2012/13 period is characterised by a reduction in real turnover\(^{108}\) of 1% and a reduction of 4% in the number of firms reporting turnover, (contrasted with a 1% reduction in registered solicitors firms).

**Figure 15. Solicitors firms market concentration summary**

<table>
<thead>
<tr>
<th>All Market segments</th>
<th>2010/11</th>
<th>2011/12</th>
<th>2012/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total solicitors firms real turnover</td>
<td>£18.9bn</td>
<td>£19bn</td>
<td>£18.7bn</td>
</tr>
<tr>
<td>Total solicitors firms reporting turnover</td>
<td>9,120 (11,038)</td>
<td>9,090 (11,296)</td>
<td>8,745 (10,938)</td>
</tr>
<tr>
<td>5 firm ratio market share(^{109}): % age (£):</td>
<td>12% (£2.1bn)</td>
<td>11% (£2bn)</td>
<td>10% (£1.9bn)</td>
</tr>
<tr>
<td>10 firm ratio market share(^{110}): % age (£):</td>
<td>19% (£3.4bn)</td>
<td>17% (£3.3bn)</td>
<td>17% (£3bn)</td>
</tr>
<tr>
<td>HHI:</td>
<td>56</td>
<td>51</td>
<td>48</td>
</tr>
<tr>
<td>Continuity: Firms in the market for all 3 years:</td>
<td>100%</td>
<td>90%</td>
<td>85%</td>
</tr>
<tr>
<td>Market Share :</td>
<td>100%</td>
<td>93%</td>
<td>86%</td>
</tr>
<tr>
<td>Number of the top 5 and top 10 firms in the market for all 3 years:</td>
<td>All of top 5 firms</td>
<td>All of top 5 firms</td>
<td>All of top 5 firms</td>
</tr>
<tr>
<td>Entry: % of firms (% of market share)(^{111})</td>
<td>10% (5%)</td>
<td>5% (4%)</td>
<td></td>
</tr>
</tbody>
</table>

---

\(^{107}\) Defined as SRA regulated entities that are defined as a law practice and reported turnover in any of the three years.

\(^{108}\) All cash figures have been converted to 2010/11 prices using the HM Treasury GDP deflator to exclude the impacts of inflation since 2010/11 unless otherwise stated. ([http://www.hm-treasury.gov.uk/data_gdp_fig.htm](http://www.hm-treasury.gov.uk/data_gdp_fig.htm))

\(^{109}\) Total revenue of the five largest suppliers as a % of the total market revenue.

\(^{110}\) Total revenue of the ten largest suppliers as a % of the total market revenue.

---

43
2.8 While the overall value of the market – measured by turnover - has remained largely static, the number of solicitors firms has fallen. In 2010/11, there were 9,120 solicitors firms with a total turnover of £18.9bn. In 2012/13, there were 8,745 solicitors firms with a total turnover of £18.7bn. There are very small changes in the distribution of turnover of all firms in the market, shown in figure 16. This suggests that the reduction in the number of firms is evenly spread across all different sizes of firms, as measured by turnover.

2.9 At the same time, the market share of the top 10 firms has fallen slightly from 19% in 2010/11 to 17% in 2012/13 while the individual firms in the top 10 group have remained the same. Further, while the levels of new entrants has fallen – from 10% of all firms in 2011/12 to 5% in 2012/13 – the level of market share has remained constant at 5%. Less entrants with the same market share in largely static market points to larger firms entering the market in 2012/13 than in 2011/12. There were fewer exits in 2011/12 than in 2010/11, and incumbent firms had proportionally more of the market. Out of the 7,457 firms on which data is available, 51% of firms have

---

111 New entrants – brand new firms. Please see the data sources and interpretation section above for an explanation of how this is calculated, and the caveats in its interpretation.
112 Firms who closed by the start of the year. Please see the data sources and interpretation section above for an explanation of how this is calculated, and the caveats in its interpretation.
113 For a detailed description of the types of legal problems captured in each segment, consumer’s response to these problems, and level of usage of solicitors please see annex 1.
seen a reduction of overall real turnover of between 2010/11 and 2012/13. Nearly a third of firms had seen a reduction of more than 10%. This means that any growth in real turnover is concentrated in just under half of all firms. None of the individual market segments show substantial proportionate changes in value as measured by turnover.

2.10 In terms of changes in overall demand for legal services, the Law Society has identified the main economic drivers behind changes in real turnover. These include households’ disposable income, business activity in the economy as a whole, housing transactions, financial sector output, unemployment rate and net exports of legal services. These factors contributed to a growth in real turnover in the whole UK legal services market of 37% between 2000-2007 and a contraction of 7% between 2007-2011.114

Figure 16. Distribution of SRA regulated firms by turnover 2010/11 to 2012/13

2.11 In the 2012 solicitors firms survey, when asked to identify which of a list of twenty one different external factors had affected the firm in the past three years, the most

---

114 The Law Society has analysed main economic drivers of real turnover in the UK legal services sector and real net exports of the sector by estimating appropriate econometric models. This enabled them to identify, using data over time on a wide range of variables: (1) which variables are the main drivers of real turnover and real net exports, (2) the size of their effects on real turnover and real net exports, and (3) how quickly their effects come through. The resulting econometric models (or equations) have then been used to analyse the contribution of the different drivers to growth in real turnover and real net exports over recent years, and to produce the forecasts for future years. See slide 37, The Legal Services Industry Part 1 – An overview, The Law Society 2013 [http://www.lawsociety.org.uk/representation/research-trends/market-assessment-2012/](http://www.lawsociety.org.uk/representation/research-trends/market-assessment-2012/)
reported factor was ‘expansion or contraction in certain practice areas’.\textsuperscript{115} Just over a third of firms highlighted the changes in legal aid, and over quarter identified changes in fees charged by other firms, changes in law, new providers and more demand for legal services. Insurance, premises, and salary cost factors were reported by less than 1\% of firms. The full results are shown in figure 17.

2.12 A key structural factor in the solicitors’ market is fragmentation – a large number of small providers. That just 0.1\% of firms account for 21\% of total market share, while a further 50\% of providers account for 3\% of total market share, demonstrates this. The data shows very little change over the past three years, as shown in figure 18. This means each segment should see very low levels of overall concentration as measured by the HHI. Reflecting this structure, recent analysis by the Law Society\textsuperscript{116} splits the supply side by the top 200 firms in terms of turnover from the remainder of solicitors firms. The top 200 accounted for 62\% of turnover in 2012/13.

Figure 17. External factors impacting solicitors firms 2009-2011

<table>
<thead>
<tr>
<th>Expansion or contraction in certain practice areas</th>
<th>Changes in legal aid</th>
<th>Changes in average fees charged by other firms/</th>
<th>Changes in law</th>
<th>Other businesses (not law firms) providing legal services</th>
<th>Increased awareness/willingness to use legal services</th>
<th>Changes in means of delivery (e.g. increased online delivery)</th>
<th>Expansion or contraction in certain geographic areas</th>
<th>Changes in economic situation more generally</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>35%</td>
<td>20%</td>
<td>28%</td>
<td>27%</td>
<td>26%</td>
<td>20%</td>
<td>12%</td>
<td>9%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Figure 18. Limited changes in market share over the past three years

<table>
<thead>
<tr>
<th>%age of firms</th>
<th>%age of market share (real turnover) - 2010/11</th>
<th>%age of market share (real turnover) - 2011/12</th>
<th>%age of market share (real turnover) - 2012/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.1%</td>
<td>22%</td>
<td>21%</td>
<td>21%</td>
</tr>
<tr>
<td>1%</td>
<td>52%</td>
<td>51%</td>
<td>51%</td>
</tr>
<tr>
<td>5%</td>
<td>72%</td>
<td>72%</td>
<td>72%</td>
</tr>
</tbody>
</table>

\textsuperscript{115} Question E2 – Have any of the following external factors impacted on your firm?, unweighted responses. See \url{https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf}  
\textsuperscript{116} The Legal Services Industry Part 2 – Main Sectors, The Law Society 2013 - \url{http://www.lawsociety.org.uk/representation/research-trends/market-assessment-2012/}
Part 2: How has market share changed?

<table>
<thead>
<tr>
<th>10%</th>
<th>2013</th>
<th>80%</th>
<th>25%</th>
<th>81%</th>
<th>50%</th>
<th>80%</th>
<th>100%</th>
</tr>
</thead>
</table>

2.13 However, the structure of supply of solicitor services is not unique in this way, with larger business dominating market share as measured by turnover across all sectors in the economy. In 2011/12, 99% of all businesses in the UK were small – had less than 50 employees and accounted for 34% of all turnover. This compares to 0.6% of all business being classed as medium – having between 50 and 249 employees – accounting for 14% of turnover. The remaining 0.1% of businesses were large – having more than 249 employees – but accounted for 51% of turnover. Using the number of employees, and applying this breakdown to SRA regulated firms we estimate that 93.3% of solicitors firms would be classified as small, 5.8% medium and 0.1% as large in 2011/12. However, there are differences in the breakdown of employment, whether considering just solicitors or all employees, and turnover as figure 19 below shows. The proportion of employees accounted for by medium businesses is 12.2% for the UK as a whole, but 24.1% for SRA regulated entities for example.

Figure 19. Estimated size of SRA regulated firms compared to all UK businesses 2011/12

<table>
<thead>
<tr>
<th>Whole economy</th>
<th>Proportion of businesses</th>
<th>Proportion of employment</th>
<th>Proportion of turnover</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small (1-49 employees)</td>
<td>99.2%</td>
<td>47.0%</td>
<td>34.4%</td>
</tr>
<tr>
<td>Medium (50-249 employees)</td>
<td>0.6%</td>
<td>12.2%</td>
<td>14.4%</td>
</tr>
<tr>
<td>Large (250 or more employees)</td>
<td>0.1%</td>
<td>40.9%</td>
<td>51.2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SRA regulated firms</th>
<th>Solicitors</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small (1-49 employees)</td>
<td>93.3%</td>
<td>47.4%</td>
</tr>
<tr>
<td>Medium (50-249 employees)</td>
<td>5.8%</td>
<td>27.6%</td>
</tr>
<tr>
<td>Large (250 or more employees)</td>
<td>0.9%</td>
<td>25.0%</td>
</tr>
</tbody>
</table>

2.14 Another key factor in the solicitors’ market is that the professional qualification allows an individual to provide legal advice in a wide range of categories of law. For individual consumers, the most common route to finding a provider is to go back to a lawyer that they used before. Combined, these observations suggest that firms have the ability to switch between market segments relatively easily – they have low switching costs and face limited barriers to entry. Understanding how this behaviour is changing is a proxy for how competition is affecting the market.

---


118 SRA data records the number of partners, solicitors, and non qualified fee earners, but not the number of employees. To enable this calculation the Law Society provided a data set derived from the 2010 Omnibus survey, which provides data on the ratio of support staff to number of solicitors and partners. These figures are calculated as a maximum estimate using the highest value between the number of solicitors or number of partners.

2.15 Previous commentary suggests that there was a general trend for increasing specialisation among solicitors, driven by customer demands, specialist panels, the professional indemnity insurance market, and legal training. Further, the SRA Code of Conduct sets out as one of the mandatory principles that a solicitor must provide a proper standard of service to their clients, which would include exercising competence, skill and diligence in relation to each client and his/her specific needs. Accordingly, a qualified solicitor could be in breach of this code if they were to provide advice in relation to an area of law in which they were unable to exercise sufficient levels of competence and skill. While it is not clear to what extent these regulations are observed in practice, they might have the effect of imposing switching costs in moving into a segment beyond the current area of specialism within a firm, through the need to retrain or hire new staff.

2.16 The 2012 survey of solicitors firms found that having a broad practice – operating in a number of market segments - was associated with higher productivity, when compared to narrow practice – deriving 90% or more of turnover from one market segment. Looking at all market segments operated in, as reported in the SRA data, firms that expanded the number of market segments they operated in between 2010/11 and 2012/13 were significantly more likely to see an increase in turnover that those who reduced the number of market segments – 53% compared to 46% - and 49% for those who didn’t change the number of market segments. We interpret this as implying an economic incentive to increase the range of market segments operated in, perhaps a result of the incentives associated with high fixed costs (salaries, premises etc) and low marginal costs.

**Figure 20. Switching lengths – how long it took firms to move into new areas of law**

![Switching lengths chart]

120 For example [http://www.publications.parliament.uk/pa/cm200304/cmselect/cmconst/391/391we47.htm](http://www.publications.parliament.uk/pa/cm200304/cmselect/cmconst/391/391we47.htm)

121 The Chi-square statistic is 16.7869. The p value is < 0.001. The result is significant at p<0.05 level.
2.17 The 2012 solicitor firms’ survey captured how long it had taken firms to move into new categories of law. This is shown in figure 20. While sample sizes are small, the results do not differ significantly across the market segments – around two out of five firms taking more than 12 months in each market segment. There is variance in the length of time it took different firms in each market segment. This would suggest that switching could be determined by firm specific factors not necessarily related to the structure of a specific market segment, suggesting limited barriers to entry in practice. This assumes that the difference in the criminal category is driven by legal aid contracting schedules – normally operating on a three year basis.

Figure 21. Number of market segments operated in by all firms and excluding fringe providers

2.18 Figure. 21 above shows the number of market segments in which firms reported any turnover, and the number of market segments in which they reported 5% or more of their turnover. The number of firms operating in just one segment has risen by 1% in 2012/13 compared to 2010/11, and by 1% for those operating in two market segments. At the same time, the number of firms operating in nine or more market segments is static at around 1%. While changes are slightly greater when all firms are included, this captures situations where a firm undertakes just one case for an existing customer in another area of work. To put it another way these firms are considered to be less committed to the market segment – as it represents such a small proportion of their turnover - so for the purposes of this analysis they are described as operating on the ‘fringe’ of the segment. Being a ‘fringe’ provider in any segment could be down to a range of factors. This may be driven by consumers demanding a cluster of services; it could be firms beginning to expand into a new market segment; or a result of the lack of accessible demand in that segment for a particular firm to generate the necessary minimum efficient scale. Excluding fringe
Part 2: How has market share changed?

2013

providers, nationally around 25% of firms reported turnover in just one segment. Equal proportions of firms reported turnover in two, three, and four market segments with little change over the past three years.

2.19 Figure 22 shows the number of market segments in which firms reported any turnover, against where they are located – London, urban, suburban, and rural. This shows that rural firms are more likely to report any turnover in just one market segment – 24% compared to 19% of their counterparts in London. This also shows little change overtime when looking at location.

Figure 22. Number of market segments operated in – urban and rural

<table>
<thead>
<tr>
<th>No. Of segments</th>
<th>London</th>
<th>Urban</th>
<th>Suburban</th>
<th>Rural</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>17%</td>
<td>18%</td>
<td>16%</td>
<td>19%</td>
</tr>
<tr>
<td>2</td>
<td>12%</td>
<td>13%</td>
<td>14%</td>
<td>13%</td>
</tr>
<tr>
<td>3</td>
<td>11%</td>
<td>11%</td>
<td>11%</td>
<td>9%</td>
</tr>
<tr>
<td>4</td>
<td>11%</td>
<td>10%</td>
<td>11%</td>
<td>8%</td>
</tr>
<tr>
<td>5</td>
<td>11%</td>
<td>10%</td>
<td>10%</td>
<td>8%</td>
</tr>
<tr>
<td>6</td>
<td>10%</td>
<td>11%</td>
<td>11%</td>
<td>9%</td>
</tr>
<tr>
<td>7</td>
<td>10%</td>
<td>9%</td>
<td>10%</td>
<td>9%</td>
</tr>
<tr>
<td>8</td>
<td>9%</td>
<td>9%</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>9</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>More than 9</td>
<td>3%</td>
<td>4%</td>
<td>4%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Figure 23. Switching market segments – firms operating between 2010/11 and 2012/13

122 Using Royal Mail postcode classification.
2.20 Looking at the way existing firms switch market segments over the 2010/11-2012/13 period shows that the smaller value sectors have greater levels of entry and exit, as might be expected. As figure 23 above shows, ignoring the consumer segment, there are large number of movements in and out of the welfare and benefits, intellectual property and civil liberties market segments. This contrasts with the wills, trusts and probate, residential conveyancing, and family market segments which each represent around 5% of total solicitors firm turnover.

Figure 24. Switching market segments – firms operating between 2010/11 and 2012/13 excluding ‘fringe’ firms

2.21 If we discount those firms on the ‘fringe’ of each segment (defined here as those with less than 5% of their turnover coming from that segment) the picture changes only marginally. As shown in figure 24, with the exception of the civil liberties and property, construction and planning market segments, the proportion of firms remaining in each segment rose. Unsurprisingly levels of switching – moving in or out of a market segment – fell in all market segments. The biggest falls came in the crime (13% less switching activity), and injury (11%). However, there is still a significant proportion of switching activity between market segments as measured by the number of solicitors firms. This suggests that switching between market

---

123 The significant increase in firms from 2 to 319 between 2010-2011 suggests data recording issues for this segment in 2010, so the analysis of this market segment covers 2011-2012.
124 For details of how many firms are considered to be on the ‘fringe’ of each market segment please see the segment by segment analysis in annex 1. The 5% limit is used for practical purposes, building on the approach taken in the 2012 solicitor firms survey where research was limited to 10% to define narrow and broad practice firms. See pages 13-14 A Time of Change: Solicitors firms in England and Wales, Pascoe Pleasence, Nigel Balmer, Richard Moorhead, The Law Society, 2013 https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf

Part 2: How has market share changed?  

2.22 Looking at how different types of firms switch, the frequency of switching appears to have no correlation\textsuperscript{125} with the number of partners. The data shows very similar patterns in terms of change in turnover split by whether the solicitors firm switched between any market segments or did not switch at all – 50% of firms who switch saw an increase in turnover compared to 51% who did not switch market segments at all. However, firms with their main office in a rural area are less likely to have switched categories at all than their counterparts in London – 65% compared to 70% over the 2010/11-2012/13 period. This is despite very similar patterns in changes in turnover with over 52% of firms in both locations seeing any increase in real turnover, shown in figure 26.

Figure 25. Lower rural switching activity

<table>
<thead>
<tr>
<th>Change in turnover</th>
<th>Any switching activity</th>
<th>No switching activity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>London</td>
<td>Rural</td>
</tr>
<tr>
<td>More than 10% increase</td>
<td>40%</td>
<td>40%</td>
</tr>
<tr>
<td>1 to 10% increase</td>
<td>13%</td>
<td>13%</td>
</tr>
<tr>
<td>1 to 10% decrease</td>
<td>16%</td>
<td>16%</td>
</tr>
<tr>
<td>More than 10% decrease</td>
<td>32%</td>
<td>32%</td>
</tr>
<tr>
<td>Any switching activity</td>
<td>70%</td>
<td>30%</td>
</tr>
</tbody>
</table>

2.23 Looking at SRA performance reports\textsuperscript{126} shows that the number of firms opening and closing is falling over time, with just 878 firms opening in 2012/13 compared to 1,214 in 2009/10. However with less firms closing, the ratio of firms opening to closing has increased – with 2.6 firms opening for every firm that closed in 2012/13.

Figure 26. SRA regulated entities - falling rates of opening and closing

<table>
<thead>
<tr>
<th></th>
<th>Opening</th>
<th>Closing</th>
<th>How many firms opened for every one that closed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009/10</td>
<td>1,214</td>
<td>534</td>
<td>2.3</td>
</tr>
<tr>
<td>2010/11</td>
<td>1,148</td>
<td>577</td>
<td>2.0</td>
</tr>
<tr>
<td>2011/12</td>
<td>1,078</td>
<td>469</td>
<td>2.3</td>
</tr>
<tr>
<td>2012/13</td>
<td>878</td>
<td>338</td>
<td>2.6</td>
</tr>
</tbody>
</table>

2.24 As a way of gaining competitive advantage over other firms, getting access to customers is key. As set out in Part 1, 64% of firms engaged in media advertising to

\textsuperscript{125} A correlation coefficient of 0.004 based on all switching activity and the number of partners in 2011/12

\textsuperscript{126} See \url{http://www.sra.org.uk/sra/how-we-work/reports.page}
attract customers. As way of establishing market share, using introducers to access a pool of customers is one strategy a firm can adopt. In previous analysis, we reported that between 2008/09 and 2010/11 the proportion of solicitors firms with referral arrangements changed only slightly from 20% to 22%.\textsuperscript{127} This fell to 20% in 2011/12, but grew to one in four firms – 25% - in 2012/13. This is prior to the implementation of the personal injury referral fee ban in April 2013.

2.25 SRA data does not record which market segments these arrangements operate, but for the purposes of this analysis we assume that these arrangements are most likely to relate to the largest areas of income. The figure below shows the proportion of firms who have referral fee arrangements, against the proportion of turnover in each market segment. In 2012/11, 37% of firms who got 5% or more of their total turnover from the injury market segment had referral arrangements. This had fallen to 32% in 2012/13. This suggests a greater prevalence of referral fee arrangements for firms that deliver services in the residential conveyancing, family, and injury market segments. However, when the level of turnover is considered the injury segment remains the most frequent area for referral arrangements.

2.26 From April 2013 these arrangements were banned in the injury segment. Given their relatively low frequency when firms derive more than 5% of their turnover, suggests their impact as a means of securing competitive advantage, and therefore as barrier to entry, is small.

\textbf{Figure 27. Referral arrangements by market segment}

2.27 Turning to productivity, looking at the data overall also shows falling levels of turnover per fee earner\textsuperscript{128} – our proxy measure of productivity - across the market. Figure 28 below shows the upper and lower quartile and median turnover generated per fee earner at all solicitors firms. To give this range some context against the costs firms face, a survey of 50 of the larger solicitors firms reported average cost per lawyer of £236k in 2012/13, compared to turnover per lawyer of £326k – 72% of turnover.\textsuperscript{129} Total employment costs - salaries and wages - represent 45% of turnover in the UK legal sector – higher than the professional services sector as a whole, at 34%.\textsuperscript{130}

**Figure 28. Falling productivity? Turnover per fee earner\textsuperscript{131} 2010/11-2012/13**

![Turnover per fee earner - all solicitors firms](image)

2.28 As can be seen, accounting for inflation, the median amount of income generated per fee earner has fallen from £87k in 2010/11 to £85k in 2012/13 – a fall of 3%. The inter quartile range has fallen by 6.3% (£5k) – excluding outliers - which shows a narrowing of the difference between the most productive and least productive firms.

\textsuperscript{128} This is based on the total reported legally qualified and non legally qualified fee earners. Legally qualified fee earners should include solicitors; other UK lawyers such as barristers, licensed conveyancers or Scottish solicitors; European Lawyers including Registered European Lawyers; other overseas lawyers including Registered Foreign Lawyers. Non-legally qualified fee earner is then any other fee earner that falls outside of those categories.

\textsuperscript{129} \url{http://www.thelawyer.com/revealed-gap-between-law-firm-costs-and-revenues-soars-over-five-year-period/1014590.article}

\textsuperscript{130} Slide 24 The Legal Services Industry Part 1 – An overview, The Law Society 2012

\textsuperscript{131} To make this calculation we have amended the SRA data set as follows: For turnover per fee earner, we have used the number of solicitors where the total number of legally qualified and non legally qualified fee earners was zero, but the number of solicitors was greater than zero. This was necessary for 7% of records in 2012, 14% in 2011, and 12% in 2010.
This suggests greater proportionate falls in productivity at the more productive firms than those in the less productive quartile – 5.3% compared to 3.8%. This should be considered against a background of falling productivity in the UK as whole since the financial crisis in 2008.\(^\text{132}\)

2.29 We can speculate that because larger firms tend to be more productive – where productivity is measured as income generated per fee earner rather than making any judgement about volume or intensity of work - and tend to undertake more work for corporate consumers\(^\text{133}\), this change is driven by reduced legal spending by corporate consumers.\(^\text{134}\) Further, the 2012 survey of solicitors firms reported, “the notable decline in turnover associated with firms with large numbers of repeat clients may be indicative of a squeeze on fees as firms have sought to retain existing business and experienced clients have sought to exercise their purchasing power”.\(^\text{135}\) An alternative explanation is that corporate customers have started to switch to cheaper substitutes to services provided by solicitors. These providers are reported to be cheaper because they have substituted human resources for technology.\(^\text{136}\)

Figure 29. SRA regulated entity market share of the 10 firm ratio in each segment

---


\(^\text{133}\) See [https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf)


Part 2: How has market share changed?

2.30 A full segment-by-segment analysis is presented in annex 1. This shows that levels of market concentration as measured by the market share of the 10 firm ratio are higher in some of the smaller value market segments such as civil liberties. The market shares of the 10 firm ratio in each segment are show in the chart below. In contrast, market concentration in the family and residential conveyancing is very low. Using the HHI measure of concentration all market segments are below the 1000 threshold to be designated as concentrated. Further the family and residential conveyancing market segments have an HHI score of just 13 and 10 respectively. Theory suggests that most firms in these market segments will have no market power with which to influence prices — they are all equal - aside from the impacts of reputation considered in part 1.

2.31 Looking overall, the solicitors market has been largely static. Aggregate market concentration measures point to limited changes over the past three years. Real turnover has fluctuated between +/- 1% of 2010/11 levels, despite a greater proportionate fall in the number of solicitors firms overall, and half of solicitors firms experiencing a decrease in real turnover. If we assume costs have risen at the same rate as general inflation profit margins would be largely constant. However, falling productivity across the sector suggests that margins are under pressure. Looking at the aggregate behaviour there does not appear to have been significant changes in expansion or concentration activity across market segments over the past three years.

2.32 Part 1 of this investigation sets out our assumptions on whether or not the different market segments are national or local. The potential impacts of smaller geographical boundaries for markets is to reduce the number of suppliers in the market, and the overall market value, therefore potentially increasing market concentration indices and increasing the likelihood of lower levels of competition. By way of example, figure 30 below shows the number of local authorities in each segment which would be classified as concentrated and highly concentrated if markets were confined to local authorities where the firm has a head office. The Competition Commission guidelines state they are likely to regard a market as highly concentrated if the HHI in excess of 2,000, or concentrated if the HHI is 1,000 or more but less than 2,000. While the Competition Commission guidelines clearly state that the concentration ratios are just one factor they consider in any competition assessment, the results would suggest if legal services provided by SRA regulated entities were truly local, these concentration indices would warrant further investigation.

Figure 30. Concentration at a local level 2012/13

<table>
<thead>
<tr>
<th>Segment</th>
<th>Highly concentrated (HHI greater than 2,000)</th>
<th>Concentrated (HHI greater than 1,000, less than 2,000)</th>
<th>Un-concentrated (HHI less than 1,000)</th>
<th>No SRA regulated supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business affairs, corporate structure, finance and tax</td>
<td>88%</td>
<td>6%</td>
<td>5%</td>
<td>1%</td>
</tr>
<tr>
<td>Civil liberties</td>
<td>23%</td>
<td>0%</td>
<td>0%</td>
<td>77%</td>
</tr>
</tbody>
</table>

### Part 2: How has market share changed?

#### 2013

<table>
<thead>
<tr>
<th>Market Segment</th>
<th>2013</th>
<th>2012</th>
<th>2011</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer</td>
<td>48%</td>
<td>0%</td>
<td>0%</td>
<td>52%</td>
</tr>
<tr>
<td>Conveyancing – residential</td>
<td>54%</td>
<td>36%</td>
<td>10%</td>
<td>1%</td>
</tr>
<tr>
<td>Conveyancing – commercial</td>
<td>75%</td>
<td>22%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Crime</td>
<td>76%</td>
<td>13%</td>
<td>3%</td>
<td>8%</td>
</tr>
<tr>
<td>Employment</td>
<td>83%</td>
<td>13%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Family</td>
<td>60%</td>
<td>33%</td>
<td>6%</td>
<td>1%</td>
</tr>
<tr>
<td>Immigration and nationality</td>
<td>38%</td>
<td>6%</td>
<td>3%</td>
<td>53%</td>
</tr>
<tr>
<td>Injury</td>
<td>84%</td>
<td>8%</td>
<td>2%</td>
<td>6%</td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td>44%</td>
<td>1%</td>
<td>0%</td>
<td>55%</td>
</tr>
<tr>
<td>Other</td>
<td>75%</td>
<td>21%</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>Property, construction and planning</td>
<td>80%</td>
<td>15%</td>
<td>2%</td>
<td>3%</td>
</tr>
<tr>
<td>Welfare and Benefits</td>
<td>51%</td>
<td>0%</td>
<td>0%</td>
<td>49%</td>
</tr>
<tr>
<td>Wills, trusts, and probate</td>
<td>61%</td>
<td>29%</td>
<td>9%</td>
<td>1%</td>
</tr>
</tbody>
</table>

#### Number of Local Authorities in England and Wales

<table>
<thead>
<tr>
<th></th>
<th>346</th>
</tr>
</thead>
</table>

Looking at how these ratios are changing over time, shows little change in the number of highly concentrated market segments. This is shown in figure 31 below. The changes in the crime, immigration, and welfare and benefits market segments are all accounted for by an increase in the number of local authorities with no SRA regulated supply, as opposed to real changes in market concentration. What is missing here is the extent to which other type of legal service provider – SRA regulated or not - have adapted services to meet consumer demand.

#### Figure 31: Highly concentrated local markets by market segment, 2010/11-2012/13

![Highly concentrated local markets by market segment](image_url)

The table below summaries the number of legal services regulated entities in each of the market segments. SRA regulated entities represent the largest number of entities in each segment, with the exception of crime where the number of self-
employed barristers estimated to be in this segment is double the number of SRA regulated entities. However, since these figures give no idea of scale they are of limited use beyond indicating that regulated substitutes to solicitor firms exist but they remain small in most market segments. Without any measure of scale, such as turnover, number of customers, or even number of hours worked, this represents the best available data. Non statutory regulated entities such as Citizens Advice Bureaux, a major substitute in the welfare and benefits market segments, or will writers in the wills trust and probate segment, are not included here.

**Figure 32. Number of regulated entities by regulator and market segment, 2012/13**

<table>
<thead>
<tr>
<th>Segment</th>
<th>SRA entities</th>
<th>CLC entities</th>
<th>BSB self-employed barristers (estimated, 2011)</th>
<th>IPREG</th>
<th>OISC</th>
<th>CMR</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business affairs, corporate structure, finance and tax</td>
<td>2,932 (61%)</td>
<td>-</td>
<td>1,901 (39%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4,833 (100%)</td>
</tr>
<tr>
<td>Civil Liberties</td>
<td>129 (15%)</td>
<td>-</td>
<td>760 (85%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>889 (100%)</td>
</tr>
<tr>
<td>Consumer</td>
<td>289 (100%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>289 (100%)</td>
</tr>
<tr>
<td>Conveyancing – Residential</td>
<td>4,764 (95%)</td>
<td>225 (5%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4,989 (100%)</td>
</tr>
<tr>
<td>Conveyancing – Commercial</td>
<td>4,352 (95%)</td>
<td>225 (5%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4,577 (100%)</td>
</tr>
<tr>
<td>Crime</td>
<td>2,117 (35%)</td>
<td>-</td>
<td>3,929 (65%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6,046 (100%)</td>
</tr>
<tr>
<td>Employment</td>
<td>3,563 (85%)</td>
<td>-</td>
<td>634 (15%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4,197 (100%)</td>
</tr>
<tr>
<td>Family</td>
<td>4,278 (67%)</td>
<td>-</td>
<td>2,155 (33%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6,433 (100%)</td>
</tr>
<tr>
<td>Immigration and nationality</td>
<td>1,341 (39%)</td>
<td>-</td>
<td>253 (7%)</td>
<td>1,833 (54%)</td>
<td>-</td>
<td>3,427 (100%)</td>
<td></td>
</tr>
<tr>
<td>Injury</td>
<td>2,713 (46%)</td>
<td>-</td>
<td>1,267 (22%)</td>
<td>-</td>
<td>1,902 (32%)</td>
<td>-</td>
<td>5,882 (100%)</td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td>510 (61%)</td>
<td>-</td>
<td>127 (15%)</td>
<td>195 (23%)</td>
<td>-</td>
<td>-</td>
<td>832 (100%)</td>
</tr>
</tbody>
</table>

---

138 An explanation of how these estimates were calculated is set out in the data sources section above.
141 The 1,971 regulated organisations in 2012/13 reported in the 2013 OISC annual report excludes those regulated by the SRA, BSB, CILEX, but includes organisations in Scotland and Northern Ireland. Following discussion with OISC, we reduced this figure by 7% to account for those organisations based outside of England and Wales. [http://www.justice.gov.uk/downloads/publications/corporate-reports/cmr/cmr-annual-report-2013.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/cmr/cmr-annual-report-2013.pdf)
Part 2: How has market share changed?

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2012</th>
<th>2011</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Other</strong></td>
<td>5,453 (84%)</td>
<td>1,014 (16%)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Property, construction and planning</strong></td>
<td>3,431 (82%)</td>
<td>760 (18%)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Welfare and Benefits</strong></td>
<td>368 (100%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Wills, trusts, and probate</strong></td>
<td>4,752 (99%)</td>
<td>29 (1%)</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

**Conclusion**

2.35 The figure below plots each segment against the key measures of market concentration and rates of entry and exit. Nationally, all market segments demonstrate very low levels of concentration with the large number of providers mitigating against the impact of a small number of firms with substantial market shares, most notably in the business affairs, corporate structure, finance and tax segment. While this is less when firms on the fringes are excluded, concentration levels remain small.

2.36 Looking at aggregate behaviour, there does not appear to have been significant changes in expansion or concentration activity across market segments over the past three years. This might be expected given the relatively short timescale involved, even given the exceptional level of change in this sector, even against the backdrop of changing consumer behaviour, reforms, and recession.

**Figure 33. Solicitor market segments, concentration, and entry and exit**

2.37 High levels of firms switching between market segments drive rates of entry and exit in each segment. However, the rate of new entrants and their market share – new firms and firms switching - fell in every segment between 2011/12 and 2012/13 as is shown below. While this may be driven in part by the data issues set out above, this finding is a concern given the aims of the LSA to stimulate greater entry and
competition in the legal services market. Whether these figures are a result of the overall reduction in solicitors firms reporting turnover, a consequence of an underlying data issue, an indication that providers are under less financial pressure to switch to new market segments, or changes in incumbent firms behaviour is unclear. Part 3 of this investigation will explore how firms have changed their structure over the past three years, including new entrants to the market.

Figure 34. Rates of SRA regulated firms entry in all market segments

<table>
<thead>
<tr>
<th>Segment</th>
<th>Percentage of firms who were ‘new entrants’ (proportion of market share)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011/12</td>
</tr>
<tr>
<td>Business affairs, corporate structure, finance and tax</td>
<td>22% (3%)</td>
</tr>
<tr>
<td>Civil liberties</td>
<td>69% (34%)</td>
</tr>
<tr>
<td>Conveyancing – Residential</td>
<td>10% (9%)</td>
</tr>
<tr>
<td>Conveyancing – Commercial</td>
<td>13% (6%)</td>
</tr>
<tr>
<td>Employment</td>
<td>21% (8%)</td>
</tr>
<tr>
<td>Family</td>
<td>13% (9%)</td>
</tr>
<tr>
<td>Injury</td>
<td>19% (14%)</td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td>33% (5%)</td>
</tr>
<tr>
<td>Other</td>
<td>19% (5%)</td>
</tr>
<tr>
<td>Property, construction and planning</td>
<td>21% (13%)</td>
</tr>
<tr>
<td>Wills, trusts, and probate</td>
<td>12% (7%)</td>
</tr>
<tr>
<td>Crime</td>
<td>16% (8%)</td>
</tr>
<tr>
<td>Immigration and nationality</td>
<td>21% (12%)</td>
</tr>
<tr>
<td>Welfare and Benefits</td>
<td>40% (19%)</td>
</tr>
</tbody>
</table>

2.38 The level of brand new firms, and their market share, varies across all market segments. This is highest in the 2011/12 in the injury segment with 6% of firms with 9% market share. This was lowest in 2012/13 in the business affairs segment, with 2% of firms with 1.3% market share.

2.39 Further, where time series information is available, there is limited evidence of competitive pressure driving firms to adapt to service some areas of unmet consumer legal need. A consumer facing a legal problem in relation to employment and family during 2009-2011 was just as likely to take no action or to handle alone as they were between 2006-2009. However, this has improved in the immigration and nationality, and injury market segments, between the two different surveys.142 This is an important measure as it provides an indication of how competition is changing. Economic theory suggests that under self regulation “Suppliers can use regulation to increase their own incomes above levels necessary to remunerate an efficient supply, and to increase the prices paid by their customers to above the levels necessary to remunerate efficient supply. Among other things, this can have immediate consequences for the level of participation in legal services markets: some consumers may not be able to afford the legal fees”.143 How consumer responses to legal problems change and why is an important measure to track over time.

---

142 See annex 1 for a comparison of consumers legal needs survey findings for each of the segments.
Part 3: How has the structure of firms changed?

1. What is the geography of market segments?
2. How has market share changed?

3. How has the level of innovation changed?

Overview

This section considers how the structure of firms in the market has changed over the past three years. The key changes have been the growth in the numbers of legal disciplinary practices (LDPs), introduced in March 2009, and the introduction of alternative business structures (ABS), permitted from January 2012. These new structures are associated with increases in turnover, improving productivity, and greater proportionate use of non-qualified fee earners when compared to other law firms. LDP firms represent about 5% of all firms, but have large and growing market shares in most market segments, most notably civil liberties, commercial conveyancing, employment and property, construction and planning. ABS firms are concentrated in the injury segment, are more likely to be existing firms converting to ABS than brand new firms, are more likely to be larger than other organisations, and are more likely to deliver services to business rather than individual consumers. Reported complaints received, resolved, and referred on compared to turnover show that LDPs and ABS have better complaints resolution ratios, though they have higher incidents of initial complaints received.
Background

3.1 This section looks at how SRA regulated firms in the market have changed their business structure over the past three years – changes in the composition of supply. This focuses entirely on solicitors firms because of lack of available data for other regulated entities. To measure these changes the Oxera market segmentation framework\(^{144}\) directs consideration of individual business characteristics such as corporate structure, size of workforce, and location. These should be considered in conjunction with changes in the use of intermediaries for the delivery of services and business support processes, though available data does not allow the use of intermediaries to be considered beyond referral arrangements.

3.2 Understanding how these elements have changed - considered alongside changes in market shares set out in part 2 and changes in innovation in part 4 - contributes to our understanding of how levels of competition have changed in the different market segments.

Figure 35. Actions taken and changes in cash turnover 2007/8-2010/11

<table>
<thead>
<tr>
<th>Action taken</th>
<th>More than 10% increase</th>
<th>1-10% increase</th>
<th>1-10% decrease</th>
<th>More than 10% decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invested in new technology</td>
<td>16%</td>
<td>15%</td>
<td>14%</td>
<td>16%</td>
</tr>
<tr>
<td>Increased number of fee-earning staff employed by the firm</td>
<td>15%</td>
<td>8%</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>Increased level of fees charged by the firm</td>
<td>11%</td>
<td>10%</td>
<td>9%</td>
<td>11%</td>
</tr>
<tr>
<td>Changed areas of practice</td>
<td>9%</td>
<td>10%</td>
<td>8%</td>
<td>15%</td>
</tr>
<tr>
<td>Expanded premises or moved to new premises</td>
<td>8%</td>
<td>5%</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>Changed method of charging (eg to fixed fees, conditional fees)</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>11%</td>
</tr>
<tr>
<td>Expanded or withdrew from certain geographic areas</td>
<td>5%</td>
<td>4%</td>
<td>4%</td>
<td>6%</td>
</tr>
<tr>
<td>Decreased number of fee-earning staff employed by the firm</td>
<td>4%</td>
<td>3%</td>
<td>10%</td>
<td>13%</td>
</tr>
<tr>
<td>Reduced size of premises or moved to alternative premises</td>
<td>3%</td>
<td>2%</td>
<td>3%</td>
<td>7%</td>
</tr>
<tr>
<td>Changed profits distributed to partners</td>
<td>3%</td>
<td>4%</td>
<td>3%</td>
<td>9%</td>
</tr>
<tr>
<td>Decreased level of fees charged by the firm</td>
<td>3%</td>
<td>4%</td>
<td>9%</td>
<td>12%</td>
</tr>
<tr>
<td>Other</td>
<td>2%</td>
<td>2%</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>Merged with another company or split off part of the firm</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>2%</td>
</tr>
<tr>
<td>Reduced investment in new technology</td>
<td>1%</td>
<td>1%</td>
<td>2%</td>
<td>4%</td>
</tr>
<tr>
<td>None</td>
<td>1%</td>
<td>0%</td>
<td>1%</td>
<td>1%</td>
</tr>
</tbody>
</table>

3.3 The 2012 survey of solicitors firms\(^{145}\) captures the range of actions taken by firms over a three year period, and how their turnover has changed. This is shown in figure 35 above. While this doesn’t imply any causal relationship, how firms response to

---

\(^{144}\) See page 27, A framework to monitor the Legal Services sector: Oxera Consulting Ltd 2011 - [https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf](https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf)

\(^{145}\) Question E3 – What actions have these factors resulted in your firm taking?, unweighted responses. See [https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf)
changes in turnover can provide an indication of the level of competition they face. So while 16% of firms who saw an increase in turnover of more than 10% had invested in technology, so did 16% of firms who saw a decrease of more than 10% in turnover. The most stark difference between the two different groups of firms is around whether or not they increased or decreased fee earners – with 15% of those seeing an increase of more than 10% in turnover increasing fee earners compared to just 4% of those seeing a decrease in turnover of more than 10%.

3.4 This provides a rich picture of the sorts of actions firms take when faced with falling or rising turnover. Regulatory data is more focussed. Using the SRA data, observable changes in business structure are organisation type, number of offices, staffing structure split between qualified and non-qualified fee earners, as well as solicitors. The most high profile changes are in relation to gaining an alternative business structure (ABS) licence. However looking at both SRA and CLC regulated ABS licence holders, only 14% of respondents to the ABS survey had moved into a new area of law since gaining a licence, and for half of these this was because they did not offer legal service before.

Alternative business structures

3.5 The SRA started accepting applications for ABS licences in January 2012, and approved the first three licences in March 2012. The Council for Licensed Conveyancers (CLC) has also issued licenses for ABS from October 2011. The ABS survey, which covers SRA and CLC regulated organisations, found that the main motivations for seeking an ABS license were to promote non-lawyers to management of the business (23%), or to comply with regulations (22%). However a range of other reasons were also mentioned as being relevant including boosting market profile (36%), accessing external investment (34%), and succession planning (28%).

Figure 36. Reasons for gaining an ABS licence – ABS survey responses

<table>
<thead>
<tr>
<th>Main factor</th>
<th>Any mention</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to external investment</td>
<td>19%</td>
</tr>
<tr>
<td>Boost to market profile</td>
<td>5%</td>
</tr>
<tr>
<td>Expansion into legal services</td>
<td>3%</td>
</tr>
<tr>
<td>Organisational restructure</td>
<td>8%</td>
</tr>
<tr>
<td>Promotion of non lawyer to management of the business</td>
<td>23%</td>
</tr>
<tr>
<td>Regulatory requirement to convert from LDP or MDP</td>
<td>22%</td>
</tr>
<tr>
<td>Succession planning</td>
<td>2%</td>
</tr>
<tr>
<td>Tax efficiency</td>
<td>5%</td>
</tr>
<tr>
<td>To offer legal services to the public, previously provided in-house</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>12%</td>
</tr>
<tr>
<td>No answer</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100% n=64</strong></td>
</tr>
</tbody>
</table>

3.6 These firms were predominantly pre existing firms converting with 77% of respondents already regulated by the SRA or the CLC. In the survey, 9% respondents already provided legal services not regulated by the CLC or SRA. A

---

146 Questions 3 and 4, online survey of all ABS licence holders with a 33% response rate; results have a +/-10% margin of error when applied to the population. Please see annex 2 for a summary of responses.
further 14% were brand new to the provision of legal services. Isolating just those firms regulated by the SRA gives a split of 28% new entrants and 71% existing firms converting.

3.7 In the 2012 solicitor firms survey, 6% of all firms indicated that they intended to seek external investment from non-solicitor professionals or companies following the introduction of ABSs, although only 1.5% of firms had undertaken any specific actions to take this forward. This was highest among firms undertaking 50% or more of their work in immigration or injury, and those who outsourced elements of their work, or undertook media advertising.

3.8 The anonymous SRA dataset of solicitors firms contained 125 organisations listed as ABS licence holders – 1% of solicitors firms in 2012/13. Of these 69 organisations were new in 2012/13, classified as new entrants, and 56 were existing SRA regulated entities, which converted to ABS status in 2012/13. This gives a split of 55% new entrants and 45% existing firms transferring. The differences between these figures and survey respondents are most likely driven by a greater proportion of converted firms responding to the survey, and the difference in time periods – the SRA data runs until April 2013, and the survey covers all firms granted a license up until the end of June 2013. In the three months between April and June, the SRA granted 27 more ABS licences. Of the 69 new entrant firms in the SRA data, 41 reported turnover in 2012/13, and 55 organisations who converted to ABS reported turnover in 2012/13. Our expectation is that the turnover figures are likely to be lower than normal give this was the first year of ABS registration, as they reflect the start up phase of some of these organisations.

3.9 As a group, the SRA regulated ABS licence holders had a total real turnover of £962m in 2012/13 (5% of the total market). Based on reported turnover, over half of the ABS licence holders who converted operate in employment, injury and other market segments, compared to only 4% in civil liberties for example. In contrast, the new entrant ABS are less concentrated in any segment. The largest proportion is in the other segment where 49% of new entrant ABS reported some level of turnover. This compares to employment and injury at 37% and 34% respectively.

3.10 However, looking at the two groups of SRA regulated ABS licence holders in terms of market share shows that they accounted for 20% of market share in the injury segment in 2012/13, compared to just 3.5% of market share in the employment segment. The 20% market share in injury is evenly split between new entrant ABS licence holders and converts. This is shown in figure 38 below. For the injury segment, this shows that:

- ABS new entrants represent 0.5% of firms but account for 10% of market share (14 firms, £217m).
- ABS converts represent 1.1% of firms but account for 10% of market share (29 firms, £212m).
- Non-ABS firms account for 98% of firms but only 80% of market share (2,670 firms, £1.7bn).
- The average turnover from injury for an ABS is £10m compared to a non-ABS average turnover from Injury of just £642k.

---

147 Question 1, online survey of all ABS licence holders with a 33% response rate; results have a +/-10% margin of error when applied to the entire population. Please see annex 2 for a summary of responses.
149 Based on a review of the ABS register - http://www.sra.org.uk/absregister/
The ABS converts had a collective turnover from injury of £209m (10.6% of the market segment) in 2011/12. This was £212m (9.9%) in 2012/13.

Figure 37. Proportion of SRA regulated ABS’s broken down by market segment

Figure 38. Proportion of SRA regulated ABS’s total market share by segment
3.11 We can speculate that the concentration on the injury segment is a direct response to the referral fee ban introduced in April 2013, but there is no clear evidence from the ABS survey responses to support this. The 2012 solicitors firms survey found that firms doing 50% or more personal injury were more productive than other firms, more likely to specialise in just this category, and most likely to report competition as a problem.150 These factors may also have driven the significant number of firms in this area becoming an ABS.

3.12 Based on the ABS survey findings, these firms mainly offer legal services, with 83% of respondents to the survey indicating that legal services were their core business, and just under a third offering non-legal services. Financial advice and asset management services were the most common with 9% of respondents providing these services alongside legal services.151

3.13 The SRA regulated respondents to the survey provide services to a wide range group of clients, but are statistically more likely to provide services to larger businesses, when compared to all solicitors firms.152 This is shown in figure 39 below. When looking at the population of ABS licence holders, these differences could be accounted for by the margin of error, meaning the real differences may be less stark. However, 91% of respondents indicated that they had not changed the groups of consumers served since they received their ABS licence, suggesting a greater likelihood of ABS offering services to businesses, in particular larger businesses. This observation is supported by other industry analysis.153

Figure 39. Types of consumer groups served – ABS and non ABS

---

150 [https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf)

151 Questions 7 and 8, online survey of all ABS licence holders with a 33% response rate; results have a +/-10% margin of error when applied to the population. Please see annex 2 for a summary of responses.

152 The Chi-square statistic is 8.6592. The p value is 0.003. This result is significant at p < 0.05.

153 For example see [http://www.legalfutures.co.uk/blog/where-consumer-abs](http://www.legalfutures.co.uk/blog/where-consumer-abs)
Part 3: How has the structure of firms changed?

Figure 40. ABS firms and use of technology

| Basic information via our firms website to provide a guide for customers as to when to use our services | 81% |
| Email addresses and phone numbers on our website | 87% |
| Contact details, and more such as online case tracking for customers | 51% |
| Online video conferencing | 10% |
| Message board/forum facilities for clients | 6% |
| Online feedback from customers | 43% |
| Interactive online serviced used throughout the whole process | 3% |
| Telephone based services | 3% |
| Other | 2% |
| No capability | 2% |
| No answer | 5% |

3.14 These firms appear to use technology to deliver services to a greater extent than other firms do, as shown in figure 40. In all, 91% of survey respondents indicated having a website that they used to deliver information and other services to their customers. This included basic information, online case tracking and feedback systems. The full list is shown in the figure below. This compares to just 52% of other solicitors firms having a website they used for advertising and 6% using legal networks websites.

3.15 In a 2013 study, the Office of Fair Trading (OFT) considered the issue of whether the ABS licensing process created a barrier to entry. They estimated that the cost of gaining an ABS licence from the SRA was between £27,000 and £160,000, including staff time. This varies by size of firm because the SRA charge application fees based on size and salary costs at larger firms are higher. However, the OFT expected these costs to fall over the medium term – reflecting the start up phase of the process. There have been a number of negative media reports on the length of the licensing process. The OFT concluded that the “introduction of ABS has removed a key barrier to market entry but the policy is still in the early stages of development. The application process both at the licensing body and the individual ABS level can be lengthy and time consuming for senior staff but we have not identified any clear barriers to entry for ABS. There is no evidence at this stage that additional compliance costs have affected either the range of services being offered or the prices being charged to consumers. It is an open question whether the time and cost of applications is acting as a deterrent.” In early 2013, SRA announced a revised process for assessing applications, which was implemented in July.

---

154 Questions 17, 18 and 19, online survey of all ABS licence holders with a 33% response rate; results have a +/-10% margin of error when applied to the population. Please see annex 2 for a summary of responses.


3.16 ABS survey respondents had the option of completing a set of additional questions on their experience of regulation and the licence application process. Of the 64 respondents, 51 opted to answer these questions, which introduces a level of self-selection bias. Of these 40 were regulated by the SRA – 26% of those licensed at the time of the survey. This means responses have a margin of error of plus or minus 13% if applied to the population of ABS licence holders regulated by the SRA at the time of the survey.

3.17 The length of time it took these organisations to become an ABS varied significantly. For 8% setting up their business or converting to an ABS took just three months, while for 18% the process took over a year. Setting up the ABS involved a range of activities in most cases; however 90% of respondents identified the licence application process as the main factor. The next most common factor identified as having a major impact on the timescale was the need to reorganise legal structure and governance, mention by 25% of respondents. Looking specifically at the ABS licence application process, suggests similar variation in length. For 5% of respondents this took less than 3 months, but for 10% of respondents this took over 12 months. For 48% of respondents this had no impact on their business as they were already regulated by the SRA. However one in five respondents reported waiting for their licence before undertaking any other activity.

Figure 41. How long it took to become an ABS – SRA regulated license holders

<table>
<thead>
<tr>
<th>How long it took to set up the ABS</th>
<th>How long it took to gain an ABS licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-3 months</td>
<td>8%</td>
</tr>
<tr>
<td>4-6 months</td>
<td>13%</td>
</tr>
<tr>
<td>7-9 months</td>
<td>18%</td>
</tr>
<tr>
<td>10-12 months</td>
<td>35%</td>
</tr>
<tr>
<td>13-18 months</td>
<td>15%</td>
</tr>
<tr>
<td>More than 18 months</td>
<td>3%</td>
</tr>
<tr>
<td>No answer/comment</td>
<td>10%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

3.18 Respondents offered a mixed set of views on the licensing application process with one commenting that “From the date our licence application went in it took six months for the process to lead to a licence. Whilst this could have been more expeditious (because it took 3 months for our case to be allocated) the dealings we had with the SRA when we were allocated an Authorisations Officer were professional and prompt and the process was well managed from that point”. This contrasts with two comments that were specifically critical of the length of time taken.

3.19 However, as a group of firms they are more likely to agree or strongly agree with the view that legal service regulation is proportionate given the risks, and the rationale for regulation is widely understood. The findings are shown in figure 42.

3.20 Finally, while 86% agreed or strongly agreed with the statement that “Complying with legal services regulation adds significant costs to running a business”, 78% agreed or strongly agreed that “legal services regulation reinforces best practice and good management”. This is similar to the findings of the SRAs analysis of the

159 Question 34, respondent 19. Please see annex 2 for a summary of responses
impacts of outcomes focussed regulation. In that research “74% of firms stated that there was nothing that they are required to do by the SRA’s regulation that they would otherwise not carry out. This indicates that the majority of respondents do not perceive any indirect costs of regulation – ie costs above the payment of a practising certificate fee”\(^{160}\)

Figure 42. SRA regulated ABS licence holders views on regulation

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree/Agree</th>
<th>Not Sure</th>
<th>Strongly disagree/Disagree</th>
<th>No Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal services regulation is proportionate given the potential risks to customers</td>
<td>46%</td>
<td>15%</td>
<td>35%</td>
<td>5%</td>
</tr>
<tr>
<td>The rationale for legal services regulation is clear and widely understood</td>
<td>53%</td>
<td>8%</td>
<td>35%</td>
<td>5%</td>
</tr>
<tr>
<td>Complying with legal services regulation adds significant costs to running a business</td>
<td>86%</td>
<td>0%</td>
<td>11%</td>
<td>5%</td>
</tr>
<tr>
<td>Legal services regulation reinforces best practice and good management</td>
<td>78%</td>
<td>8%</td>
<td>11%</td>
<td>5%</td>
</tr>
<tr>
<td>Legal services regulation is better than in other sectors</td>
<td>21%</td>
<td>50%</td>
<td>26%</td>
<td>5%</td>
</tr>
</tbody>
</table>

3.21 It is open to speculation that a negative perception of costs and time involved might have contributed in some way to the falling of all new entrants generally (see part 2 above), but this could equally be accounted for by the wider economic environment. How this changes following the new application process will be something to monitor.

Legal disciplinary practices

3.22 LDPs have been permitted since March 2009. Under transitional arrangements, all LDPs will have to convert to ABS status eventually. In 2009, the LSB conducted in depth interviews with these types of firms regulated by the SRA and CLC to record their experience of converting to LDP status\(^{161}\). The majority of firms interviewed commented that being an LDP had enabled firms to bring in a wider range of skills and therefore had made them entities that are more dynamic. Firms also noted the benefits for consumers in terms of opportunities for bundling services and the emergence of national firms offering standardised services such as conveyancing. In some cases this also meant undertaking an IT program and using new technologies, but the majority of firms interviewed said that little had changed in terms of the operation of their firms but that becoming a LDP had ‘legitimised’ their structure.

3.23 As shown in figure 43, in 2010/11 there were 378 LDPs, 491 in 2011/12 and 429 in 2012/13, with 39 having closed and 23 LDPs converting to ABS\(^{162}\). However, while this group of firms never represents more than 5% of all firms, they accounted for 14% of market share in 2012/13. Further, firms who were LDPS in 2012/13 were statistically\(^{163}\) more likely to have seen an increase in turnover in the past three years.

\(^{160}\) Measuring the impact of Outcomes-focused Regulation (OFR) on firms, SRA, February 2013
www.sra.org.uk/impactofr/

\(^{161}\) For a summary see http://www.legalservicesboard.org.uk/Projects/abs/pdf/ldp_interviews_factsheet.pdf

\(^{162}\) From 2012/13, the SRA no longer records whether a firm is an LDP or not unless they have a non-lawyer owner. For the purpose of this analysis, we have assumed that LDPS that are still reporting turnover are still LDPS and have not reverted to non-LDP status, beyond the change in administrative recording.

\(^{163}\) Chi-square statistic is 7.8328. The p value is 0.005. This result is significant at p < 0.05.
Part 3: How has the structure of firms changed? 2013

- 57% compared to 49% for all providers. Looking at the market segments in which these firms operate shows that this group of firms are proportionately over represented in each of the market segments – have greater market share than their number would suggest – except for consumer problems. This group of firms have nearly a fifth of the market share in the civil liberties, commercial conveyancing, employment, other, property, and welfare market segments. This broad spread is in contrast to ABS licence holders concentration in the injury segment.

Figure 43. LDPS market share

<table>
<thead>
<tr>
<th>All Market segments</th>
<th>2010/11</th>
<th>2011/12</th>
<th>2012/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total LDP turnover</td>
<td>£2.3bn</td>
<td>£3.4bn</td>
<td>£2.7bn</td>
</tr>
<tr>
<td>(%age of total turnover)</td>
<td>(12%)</td>
<td>(18%)</td>
<td>(14%)</td>
</tr>
<tr>
<td>Total LDPS reporting turnover</td>
<td>378</td>
<td>491</td>
<td>429</td>
</tr>
<tr>
<td>(%age of all solicitors firms)</td>
<td>(4%)</td>
<td>(5%)</td>
<td>(5%)</td>
</tr>
</tbody>
</table>

Proportion of firms change in real turnover 2010/11-2012/13:

- Increase of more than 10%: 43%
- Increase of 1% to 10%: 14%
- Decrease of 1% to 10%: 25%
- Decrease of more than 10%: 19%

Market share by segment:

- Business affairs, corporate structuring, finance, and tax: 9% 11% 11%
- Civil liberties: 8% 18% 19%
- Consumer problems: - 8% 4%
- Conveyancing – residential: 11% 13% 12%
- Conveyancing – commercial: 14% 23% 20%
- Employment: 17% 20% 18%
- Family: 10% 13% 11%
- Injury: 18% 27% 15%
- Intellectual property rights: 16% 11% 13%
- Other: 15% 23% 19%
- Property, construction, and planning: 13% 15% 18%
- Wills, trusts and probate: 13% 15% 13%
- Crime: 8% 9% 9%
- Immigration and nationality: 12% 13% 14%
- Welfare and benefits: 16% 18% 18%

3.24 As a group LDPSs consistently have the highest levels of productivity, using the proxy measure of turnover per fee earner. Figure 44 below shows the changes in productivity by different organisation type over the 2010/11-2012/13 period. Median turnover per fee earner is substantially higher for LDPSs than other non-ABS licence holders - £105k compared to £84k in 2012/13.
Part 3: How has the structure of firms changed? 2013

3.25 Due to limited data, we cannot determine to what extent organisation structure is linked to other factors that drive productivity. The 2012 solicitors firms survey\textsuperscript{164} found firms that were more productive were most likely based in London, provided services to clients nationally, had a large proportion of repeat clients, had a broad practice but also did personal injury; undertook media advertising and outsourced IT. While ABS firms are concentrated in the injury segment – where the research\textsuperscript{165} shows a general association with higher productivity - LDPs cover a far wider spread of market segments. This would suggest that higher levels of productivity for LDPs are more likely to be firm related, and less likely to be driven by wider market segment factors. It also invites caution in interpreting the findings on ABS productivity.

3.26 We cannot tell whether statements about intent to harness technology have been put into action successfully, but this group of firms do seem to have been more successful when assessed against this measure for the past three years. To what extent these firms were already performing well compared to other firms is unclear. However, both LDPs and ABS are on average larger than other types of firms, discussed below, suggesting scale of operations might be also be a factor.

Other aspects of business structure

3.27 Looking at the changes in constitution type over time shows an increase in entities listed as ‘company limited by shares’, and a reduction in partnerships.

\textsuperscript{164}Page 21 onwards, \url{https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf}

\textsuperscript{165}Page 14 \url{https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf}
Figure 45. Increasing companies – constitution type

<table>
<thead>
<tr>
<th></th>
<th>2010/11</th>
<th>2011/12</th>
<th>2012/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Practitioner</td>
<td>34%</td>
<td>31%</td>
<td>30%</td>
</tr>
<tr>
<td>Partnership</td>
<td>31%</td>
<td>28%</td>
<td>26%</td>
</tr>
<tr>
<td>Limited Liability Partnership</td>
<td>13%</td>
<td>14%</td>
<td>14%</td>
</tr>
<tr>
<td>Company Limited by Shares</td>
<td>21%</td>
<td>25%</td>
<td>28%</td>
</tr>
<tr>
<td>Other</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
</tr>
</tbody>
</table>

3.28 Other reports suggest that changes in constitution type are most likely driven by tax incentives.\(^{166}\) A company limited by shares pays corporation tax, where as limited liability partnerships are taxed in the same way as partnerships – an income tax based on firms profits. Clearly constitution type is not as straightforward as this might suggest, with some businesses using multiple constitution types to best reflect staffing structures, tax efficiency, and regulation. Available data limits any further investigation.

3.29 However, a higher proportion of firms that were companies limited by shares in 2012/13 saw any rise in turnover over the 2010/11-2012/13 – 57% compared to 49% of those who were partnerships. This is shown in figure 46 below. However, in 2012/13 limited liability partnerships accounted for 61% of total market share compared to 8% for companies limited by shares reflecting the fact that the largest solicitors firms tend to be limited liability partnerships.

Figure 46. Growth in turnover by constitution type

<table>
<thead>
<tr>
<th></th>
<th>More than 10% increase</th>
<th>1% to 10% increase</th>
<th>1% to 10% increase</th>
<th>More than 10% increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Practitioner</td>
<td>39%</td>
<td>10%</td>
<td>14%</td>
<td>38%</td>
</tr>
<tr>
<td>Partnership</td>
<td>28%</td>
<td>16%</td>
<td>25%</td>
<td>30%</td>
</tr>
<tr>
<td>Limited Liability Partnership</td>
<td>39%</td>
<td>15%</td>
<td>24%</td>
<td>22%</td>
</tr>
<tr>
<td>Company Limited by Shares</td>
<td>46%</td>
<td>11%</td>
<td>16%</td>
<td>27%</td>
</tr>
</tbody>
</table>

3.30 One response to competitive pressures might be to expand into new office locations to increase capacity or decrease office locations to reduce costs. Between 2011/12 and 2012/13 182 solicitors firms increased the number of offices they had, while 98 reduced the number of offices. The remaining 98% kept the same number of offices. Looking at the distribution of the number of offices shows no significant change over time. There has been a 1% increase in firms with 1-2 offices, and a 1% decrease in firms with 3-4 offices. In 2012/13 all the 10,938 registered solicitors firms reported having 24,289 offices, compared to 11,293 reporting having 24,866 offices in 2011/12 – a reduction of 2%.

Figure 47. No change – solicitors firms offices

<table>
<thead>
<tr>
<th></th>
<th>2010/11</th>
<th>2011/12</th>
<th>2012/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-2 offices</td>
<td>90%</td>
<td>91%</td>
<td>91%</td>
</tr>
</tbody>
</table>

Part 3: How has the structure of firms changed?

3.31 Looking at changes in office location at a local authority level, a small proportion of firms moved head office location. In between 2010/11 and 2011/12, 183 (1.7%) of firms moved from one local authority to another. This figure is 124 (1.1%) between 2011/12 and 2012/13. This points to little change in the geographical locations of solicitors firms over time, although this will not capture head office movements within a local authority.

Fee earning workforce

3.32 Some respondents to a recent survey conducted by the Legal Education and Training Review reiterated a concern\(^\text{167}\) that the LSA reforms will lead to lower qualified staff doing legal work, which is claimed will result in lower quality work. Traditionally the key way of controlling the quality of advice provided - therefore protecting consumers from poor quality advice managing the asymmetric information risk – was to have high barriers to entry in the form of professional qualifications. A risk of this approach is that it builds in a substantial cost to legal advice excluding a significant proportion of consumers – “if the quality standards are set by the profession to which they apply, the likely result will be that they will be set too high”.\(^\text{168}\)

3.33 Using the SRA data we can analyse to what extent any change in fee earner make up has taken place between 2011/12 and 2012/13.\(^\text{169}\) Overall changes are shown in the table below, and point to a headline increase in non-legally qualified earners from 23% to 27% of solicitors firms workforce between 2011/12 and 2012/13. At the same time, the number of solicitors has remained broadly flat, pointing to the growth in the overall workforce coming from the increase in non-legally qualified fee earners. This suggests that at an aggregate level, business owners are using non-legally qualified fee earners to build capacity, rather than substituting non-legally fee earners for qualified fee earners. To what extent this is related to the reported fall in training contracts\(^\text{170}\) is unclear.

Figure 48. Fee earning workforce changes

<table>
<thead>
<tr>
<th></th>
<th>2011/12</th>
<th>2012/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total fee earning workforce (FTE) (%) annual change</td>
<td>133,019</td>
<td>139,165</td>
</tr>
<tr>
<td>Legally qualified (FTE) (%) of workforce</td>
<td>102,562 (77%)</td>
<td>101,740 (73%)</td>
</tr>
</tbody>
</table>


\(^{168}\) See page 38, and section 4 generally, Understanding the economic rationale for legal services regulation, Regulatory Policy Institute, [https://research.legalservicesboard.org.uk/wp-content/media/Why-regulate-legal-services-RPI-report.pdf](https://research.legalservicesboard.org.uk/wp-content/media/Why-regulate-legal-services-RPI-report.pdf)

\(^{169}\) In 2010/11, the annual data collection process did not make a distinction between legally qualified and non-legally qualified fee earners.

Part 3: How has the structure of firms changed?

<table>
<thead>
<tr>
<th>Non-legally qualified (FTE)</th>
<th>30,457 (23%)</th>
<th>37,424 (27%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of solicitors (% of workforce)</td>
<td>101,601 (76%)</td>
<td>101,324 (73%)</td>
</tr>
<tr>
<td>Derived legally qualified non-solicitors</td>
<td>961 (0.7%)</td>
<td>416 (0.3%)</td>
</tr>
<tr>
<td>Partners</td>
<td>44,173 (33%)</td>
<td>44,973 (32%)</td>
</tr>
<tr>
<td>Derived gearing</td>
<td>1:3</td>
<td>1:3.1</td>
</tr>
</tbody>
</table>

3.34 Reducing fee earning staff is not always associated with falling turnover. Looking at overall changes in fee earning workforce (both legally and non-legally qualified) and changes in turnover over the 2011/12 to 2012/13 period shows that 28% of the 8,211 firms in this group had increased turnover without any increase in the number of staff. A further 10% had done so even while reducing the total number of staff by any amount. This would point to increases in productivity per fee earner – perhaps driven by better utilisation or resources, better use of IT better customer acquisition techniques, or increases in fees achieved. The reality is that this will be driven by a combination of these factors in line with the findings of the 2012 solicitor’s survey shown in figure 3.5 above.

3.35 Around a third of solicitors were partners in both 2011/12 and 2012/13. Between 2011/12 and 2012/13 only 9% of solicitors firms reduced the number of partners, while 8% increased the number of partners.

3.36 We have derived a gearing figure for all solicitors firms. In this context, gearing refers to the number of fee earners per partner. This is a key indicator because when firms are profitable they are more likely to increase fee earners rather than promote fee earners to partnership. Conversely when faced with financial challenges, it is reported to be easier to lay off fee earners than it is to remove partners. Consequently, it can be used as a measure of growth in profitability. Given that gearing is growing year on year this might point to some growth in profitability at the aggregate level. Looking at increases in turnover, not profit, there was no marked difference between whether firms had increased or reduced gearing levels between 2010/11 and 2012/13 - 50% who increased gearing saw an increase in turnover compared to 49% who decreased gearing.

3.37 Looking at firms making any change in fee earner numbers, on a segment by segment basis, and excluding fringe providers, the change in workforce varies. In the chart above, 44% of firms who do generate more than 5% of their turnover from the intellectual property rights segment have increased the number of fee earning full time equivalents (FTE) in the past two years. However, only 32% of firms who generate more than 5% of their turnover from the will trusts and probate market segment have increased the number of fee earning staff. However, there is no obvious link between market segments with greater levels of churn – as shown in Part 2 – and changes in fee earning staff.

3.38 Looking at the ratio of qualified and non-legally qualified fee earners by ABS, LDP and other type of solicitors firms shows that ABS organisation have greater proportional share of both legally qualified and non-legally qualified fee earning staff when compared to the proportion of all solicitors firms. This shows that while they are larger they make more use of non-legally qualified fee earning staff.
Part 3: How has the structure of firms changed?

3.39 Returning to the concerns about impacts on quality, without any direct measures of quality in the sector there is no direct evidence from which to gauge the effects – positive, neutral, or negative – on the quality of work undertaken. We have discussed the lack of quality measures and limitations of using complaints data before, and summarised research suggesting some organisations were not making consumers aware of the complaints processes. While consumers complaints represent an imperfect ‘output’ measure of quality, so do traditional ‘input’ measures – the additional qualifications held by advisers for example.

3.40 The SRA data shows the age of advisers – considered to be too far removed to be a proxy for experience post qualification – but not whether the individuals are members of any specialist panels that require higher levels of knowledge of an area of law. Comparing published lists of accreditation scheme members as at 1st July 2013 to anonymous 2012/13 turnover data shows that rates of membership vary.

---

considerably between the different schemes. As shown in figure 51 below, while 89% of firms reporting turnover in crime have at least one member of staff who is a member of the criminal litigation scheme, only 30% of firms reporting turnover in family do, and 12% of firms reporting any turnover in immigration and asylum. What relationship membership on the proportion of complaints generated is unclear.

Figure 51. Proportion of firms with at least one accredited member compared to number of firms reporting any turnover in that category

3.41 We have discussed in previous analysis the limitations of using satisfaction rates and complaints in analysing changes in quality.\(^\text{172}\) For example, the research into will writing shows limited links between consumer satisfaction with service and the quality of the advice given.\(^\text{173}\) Our view remains that while entry controls and education and training requirements can be important tools in mitigating quality risks, they are not in themselves sufficient for ongoing quality assurance and the full range of regulatory tools need to be utilised at both individual and entity level. In 2012, the LSB recommended that the approved regulators address key issues in relation to quality, and has identified indicators for each of these. Without these measures in place there is no objective way of assessing changes in quality. In the continued absence of other measures, for the purposes of this analysis we use the number of complaints against turnover to track changes in quality over time. By combining complaints with turnover, we seek to account for change in volume of customer’s overtime – in the absence of actual number of customers.

---

\(^{172}\) See section A.2. Outcome 2. Quality of legal service is improved overall compared to 2009, https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf

\(^{173}\) See Understanding the consumer experience of will-writing services IFF research 2011 https://research.legalservicesboard.org.uk/wp-content/media/Will-writing-experiences-2011.pdf
Figure 52. Self reported complaints by type of organisation

Figure 53. Turnover generated by complaints received and referred to the Legal Ombudsman
3.42 Using the SRA entity data, between 2011/12 and 2012/13 the self reported number of complaints received by solicitors firms fell by 2%, and the self reported number of complaints referred to LEO fell by 15% - from 4,653 to 3,975. This compares to published LEO figures of complaints received about SRA regulated firms of 7,130 in 2011/12 and 7,268 in 2012/13. What drives these differences is unclear, meaning these figures should be treated with caution. However, we can speculate that the greater fall in the rate of complaints going to LEO compared to the rate of complaints received, could be evidence of complaint handling improving within firms.

3.43 In 2012/13, ABS organisations resolved 93% of complaints received, LDPs 88% and other organisations 83%. Further, ABS organisations resolved 11 complaints for every one referred to LEO. For LDPs this was 5, and for other solicitors firms this was 4.

3.44 Looking at figure 53 above, LDPs generate the highest levels of turnover per complaint – and therefore receive the lowest number of complaints when their size is taken into account. This increased substantially between 2011/12 and 2012/13. Non-ABS and LDP organisations have largely static turnover per complaint received - £740k in 2011/12 compared to £780k in 2012/13. However, this latter group has increased turnover per complaint referred to LEO from £3.9m to £4.6m. For ABS organisations they generated less turnover per complaint received at £310k, but comparable turnover per complaint referred to LEO at £4.3m.

3.45 Why LDPs perform better on these measures is unclear. The higher resolution rate for ABS may be driven by simpler complaints arising in the first year of operations, or differences in recording complaints. Equally the higher turnover per complaint referred to LEO may be linked to the proportion of business consumers – most of whom will be excluded from the ombudsman scheme. Again, this will be something to monitor going forward.

3.46 Looking at all types of organisations suggests no relationship at the firm level between the changes in turnover and change in complaints received, resolved, and referred to LEO. These figures are set out in figure 54 below. However, a key component missing here is what proportion of each firms turnover is generated from customers who are medium or large business consumers or charities with over £1m income – excluded from the ombudsman scheme. Further, 93% of complainants in 2012/13 were individuals compared to 2% who were micro enterprises and 1% who were charities, clubs, associations or societies. In an attempt to address this shortcoming in the data, we can look at categories of complaints reported to LEO.

Figure 54. Changes in turnover and self-reported complaints

<table>
<thead>
<tr>
<th>Proportion of organisations</th>
<th>More than 10% increase in turnover</th>
<th>1% to 10% increase in turnover</th>
<th>1% to 10% decrease in turnover</th>
<th>More than 10% decrease in turnover</th>
</tr>
</thead>
<tbody>
<tr>
<td>36%</td>
<td>13%</td>
<td>20%</td>
<td>31%</td>
<td></td>
</tr>
</tbody>
</table>

---

174 [http://www.legalombudsman.org.uk/research-decisions/complaints-data.html](http://www.legalombudsman.org.uk/research-decisions/complaints-data.html)

175 [http://www.legalombudsman.org.uk/research-decisions/Complaints%20data/2012-13-pdf-versions/Who_was_complained_about.pdf](http://www.legalombudsman.org.uk/research-decisions/Complaints%20data/2012-13-pdf-versions/Who_was_complained_about.pdf)

Part 3: How has the structure of firms changed?

### Proportion complaints received in 2012/13

<table>
<thead>
<tr>
<th></th>
<th>26%</th>
<th>22%</th>
<th>38%</th>
<th>14%</th>
</tr>
</thead>
</table>

### Proportion complaints resolved in 2012/13

<table>
<thead>
<tr>
<th></th>
<th>27%</th>
<th>21%</th>
<th>38%</th>
<th>13%</th>
</tr>
</thead>
</table>

### Proportion complaints referred to LEO in 2012/13

<table>
<thead>
<tr>
<th></th>
<th>26%</th>
<th>22%</th>
<th>35%</th>
<th>18%</th>
</tr>
</thead>
</table>

3.47 Figure 55 sets this out. This shows improvements in the ratio of turnover to complaints over the past two years in the consumer, employment, injury, and wills trusts and probate market segments. Consumer and employment market segments have seen falls in real turnover between 2011/12 and 2012/13 injury, and wills trusts and probate market segments have seen increases. This contrasts to falls in the crime and welfare and benefits market segments – both of which have seen falls in overall turnover – and property construction and planning which has seen an increase.

**Figure 55. Turnover generated per complaint to LEO in market segments with large proportions of individual consumers**

3.48 As one potential proxy measure for quality this points to improving quality in some market segments but not others. Changes in total turnover do appear to be related to the number of complaints generated, as shown in figure 56 below. There is a weak

---

177 We combined LEO complaints data with SRA turnover data using the Oxera segmentation framework as follows - Criminal was matched to the Crime segment; Employment Law to Employment; Family Law to Family; Immigration and Asylum to Immigration and nationality; Other, Litigation, and Financial Law to Other; Personal Injury to Injury; Property to Property, construction and planning; Social Welfare to Welfare and benefits; Wills and Probate to Wills, trusts and probate; and Residential Conveyancing to Conveyancing - residential.
negative correlation\textsuperscript{178} between changes in turnover and complaints to LEO, meaning that where an increase in turnover occurs complaints to LEO tend to fall. Compare residential conveyancing with crime for example. In residential conveyancing, there has been a 6\% increase in real turnover between 2011/12 and 2012/13 and an 8\% fall in complaints received by LEO. In the crime segment, there has been a 5\% fall in turnover and a 14\% increase in complaints to LEO. However, in the family, injury, and property market segments an increase in turnover is associated with an increase in complaints to LEO. To make any firm conclusions on a link between turnover and service failings would require further analysis and better data.

Figure 56. Changes in turnover and complaints to LEO by market segment, 2011/12 to 2012/13

Conclusions

3.49 These new type of business structures are associated with increases in turnover, improving productivity, and greater proportionate use of non-qualified fee earners when compared to other law firms. LDP firms represent about 5\% of all firms, but have large and growing market shares in most market segments, most notably civil liberties, commercial conveyancing, employment and property, construction and planning. However, we cannot be certain to what extent business structure is linked to other factors, meaning we cannot establish any causal link. These organisations may have been performing well on these measures before they changed their structure, and now continue to do so.

\textsuperscript{178} Using a Pearson Correlation Coefficient the value of $R$ was -0.79. The value of the $R^2$ was 0.62. However, excluding the welfare and benefits segment the value of $R$ was just -0.07, and the value of $R^2$ as 0. This would suggest no correlation at all.
3.50 ABS firms are concentrated in the injury segment. They are more likely to be existing firms converting to ABS than brand new firms; are more likely to be larger than other organisations; and are more likely to deliver services to business rather than individual consumers. Reported complaints received, resolved, and referred on compared to turnover show that LDPs and ABS have better complaints resolution ratios, though they have higher incidents of initial complaints received.

3.51 Some firms have increased turnover while maintaining or reducing staff numbers, suggesting improved productivity or increased fee levels. This could be competition driving firms to be more cost efficient but we do not know whether lower costs are being passed onto consumers in the form of lower prices.

3.52 New business structures appear to have brought greater competition to the different market segments - notably the injury segment. How these new business models continue to perform will be a key area to monitor overtime.
Part 4: How has the level of innovation changed?

Overview

This section looks at how the levels of innovation in this sector have changed in the past three years, using the standard classifications of product, process, marketing, and organisational innovations. Looking at the 2006-2009 period, the traditional culture and strong regulatory structures were reported to be the main barriers to innovation. ABS licence holders report the same areas as barriers, alongside a lack of access to capital and the uncertainty around future laws and regulation. Generally, the business affairs, other, injury, employment, and family market segments are associated with the highest level of publicised innovations. The civil liberties, consumer, immigration, crime, and intellectual property rights market segments are associated with the lowest levels but this could be explained by lower levels of media interest. ABS organisations are associated with more frequent reports of new innovations when compared to other SRA regulated providers, with around 13% of ABS organisations publicising an innovation not related to their organisational structure. Just 1% of other SRA regulated organisations reported any form of innovation. These organisations were mainly providing services to business consumers but there is no evidence of prices falling in this area.
Part 4: How has the level of innovation changed?

Background

4.1 Since we are seeking to understand how competition has changed over the past three years, one aspect to consider is how the level of innovation has changed. This is because “the dynamics of competition create incentives for suppliers to increase productivity through innovation, which lowers costs and hence prices through time”. However, there is highly limited published information on innovation in legal services in the UK, meaning our analysis is limited as a consequence.

4.2 Traditionally, innovation in legal services has been reported to be quite limited, as a direct result of regulation restricting models and activity, and more subtly via its impact in setting a restricted range of cultural norms. In relation to legal services in the US, one author stated that “the professional regulation limits what may be offered as a legal product or service, homogenizes the pool of potential innovators in terms of training and risk orientation, prohibits the corporate practice of law, severely restricts the available financing for large-scale legal ventures, and constrains the capacity to exploit economies of scope and scale in developing better methods of producing what business clients ultimately need: holes in walls, not more elaborate drills”. Competition is one part of the environment necessary to make innovation happen. Innovation captures the extent to which firms compete against each other by improving existing products and introducing new ones perhaps using new technologies.

4.3 However, if innovations are being used to develop competitive advantage over rivals the likelihood is that the innovator will keep the innovation hidden for as long as possible. For our analysis we therefore revert to situations where the innovation has been publicised to promote a new service offering, and hence is observable. We reviewed a range of press articles on innovations from the 2010/11 to 2012/13 period. This approach has significant problems – most notably that an innovator has an incentive to overstate the value of the innovation and its level of innovativeness as a way of promoting their services. To counter this we restrict our analysis to classifying the type and frequency of reported innovations and do not seek to describe levels of innovation. This approach may also favour firms that are likely to attract media attention, which might mean a bias towards larger firms. However, the review of press articles picked up 30 examples of reported innovations from non ABS SRA regulated firms, who were also outside of the top 100 largest solicitor firms.

4.4 Further, we use the findings of the survey of ABS licence holders to describe how this group of providers have changed the services they offer. The focus on this group is driven by fact that they represent new business structures associated with trying new approaches – approaches that will sometimes succeed and will sometimes fail. Any novel idea will go through a trial period before becomes a viable model to be imitated. An increase in this activity can be seen as a sign of increasing competition. However they

---

182 These articles were published by Legal Futures, the Gazette, the Lawyer, the Solicitors Journal, Legal Week, the Times, the Financial Times, the Guardian, City AM, and the Manchester Evening News.
183 For a further discussion of this issue see http://lawyerwatch.wordpress.com/2012/10/11/innovation-beyond-the-burning-bridge/
184 For example see http://www.lawgazette.co.uk/news/in-deed-bows-out-abs-venture
are by no measure the only source of innovation within the legal services market, as the analysis here reflects.

**Innovation in legal services 2006-2009**

4.5 A 2007 report into innovation\(^{185}\) considered the level of innovation in solicitors firms who provided legal aid. This commented that innovation in this part of legal services was normally driven by central government through legal aid reform, meaning providers had weak incentives to innovate themselves especially as they might not be rewarded for doing so.

4.6 A 2009 investigation into innovation in a range of professional service sectors\(^{186}\) surveyed 178 solicitors firms across the UK, and found that innovation in legal services was among the lowest in the sectors reviewed. The results for law and some of the other service sectors considered are shown in the table below.

4.7 They found that the largest firms were significantly more innovative than smaller ones, especially in the marketing and organisational dimensions of innovation. However, much of the innovation in products and processes was driven by legislative and regulatory requirements. Further, they reported that respondents felt the main barrier to innovation was cultural – conservatism was a major constraint on innovation in legal services. The report’s authors concluded that the low levels of innovation capability possibly reflected “the strong regulatory structures which govern and shape the activities of firms in the sector”.\(^{187}\)

**Figure 57. NESTA survey of innovation in law firms compared to other service sectors 2009\(^{188}\)**

<table>
<thead>
<tr>
<th>Type of innovation between 2006-2009</th>
<th>Law</th>
<th>Accountancy</th>
<th>Architecture</th>
<th>Consultancy</th>
<th>Software &amp; IT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product or service innovator</td>
<td>27.5%</td>
<td>26.2%</td>
<td>40.3%</td>
<td>63.8%</td>
<td>65.1%</td>
</tr>
<tr>
<td>New to market product/service innovation</td>
<td>6.5%</td>
<td>5.9%</td>
<td>21.7%</td>
<td>27.3%</td>
<td>45.7%</td>
</tr>
<tr>
<td>Process innovation</td>
<td>22.4%</td>
<td>19.4%</td>
<td>32.6%</td>
<td>33.2%</td>
<td>34.5%</td>
</tr>
<tr>
<td>New to market process innovation</td>
<td>1.4%</td>
<td>2.2%</td>
<td>7.0%</td>
<td>3.3%</td>
<td>7.2%</td>
</tr>
<tr>
<td>Strategic</td>
<td>14.6%</td>
<td>13.6%</td>
<td>19.0%</td>
<td>43.7%</td>
<td>37.9%</td>
</tr>
</tbody>
</table>


Part 4: How has the level of innovation changed?

### Innovation Changes 2013

<table>
<thead>
<tr>
<th>Innovation Type</th>
<th>2009</th>
<th>2011</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managerial innovation</td>
<td>15.5%</td>
<td>11.7%</td>
<td>19.6%</td>
<td>31.9%</td>
<td>27.6%</td>
</tr>
<tr>
<td>Organisational innovation</td>
<td>18.5%</td>
<td>10.7%</td>
<td>26.5%</td>
<td>42.4%</td>
<td>42.2%</td>
</tr>
<tr>
<td>Marketing innovation</td>
<td>31.9%</td>
<td>24.7%</td>
<td>57.7%</td>
<td>55.5%</td>
<td>48.8%</td>
</tr>
</tbody>
</table>

4.8 Since 2009, there have been significant changes to the regulatory environment for law firms including new business structures and a move to outcomes focused regulation. In a recent survey of regulated entities\(^\text{189}\), the SRA found that 13% of firms stated they were planning to or already had taken advantage of the new regulatory regime *“to be more innovative in the way clients’ needs are met”*. A further 13% stated they were planning to or already had taken advantage through changing the business structures, and a further 4% to introduce new services. In looking to address unnecessary regulation that is not in the public interest, in early 2013 the SRA conducted a ‘Red Tape Challenge’ on the basis that: *“Good regulation is essential for businesses to develop and thrive, and to protect consumers and uphold confidence in the market. However, the over-development of regulation can generate unnecessary burdens that can cost time and money, and stifle initiatives”*.\(^\text{190}\) The SRA have implemented a first round of changes, and consulted on second round of changes.

### Capabilities and barriers – ABS survey findings

4.9 A key change enabled by LSA reforms was the licensing of non-lawyer ownership of solicitors firms. Permitting new business structures in legal services was designed to enhance innovation. However this may be an enabler but not a guarantee of success. As one respondent to the ABS survey stated: *“ABS has facilitated the introduction of investment into new ways of delivering legal services product. The legal professional must recognise the need to change though and worryingly there still seems reluctance in the profession to do so. An ABS licence does not suddenly turn you in to a profitable legal services business, the people managing the business still have to do that bit”*.\(^\text{191}\)

4.10  Looking at the responses to the ABS license holder survey, 88% of respondents had not changed the services they offer since receiving their ABS licence from the SRA.\(^\text{192}\) Looking at how organisations perceived themselves\(^\text{193}\), 41% of SRA regulated respondents did not see themselves as different to non-ABS organisations, and 20% were still marketing themselves as a traditional law firm. This is further illustrated by the reports of a number of solicitors firms gaining ABS licences to allow them flexibility to adapt in the future.\(^\text{194}\) The full range of perceived areas of difference is shown below. The main areas of difference are reported as being a focus on what consumer want (29%) and what businesses need (31%). As one respondent stated *“We are well managed and organised which results in the provision of a good service to our customers. We work hard at customer service and this makes a big difference”*.\(^\text{195}\) This

\(^{189}\) Figure 7.4, Measuring the impact of Outcomes-focused Regulation (OFR) on firms, SRA, February 2013
\(^{191}\) Question 27, respondent 19.
\(^{192}\) Question 2.
\(^{193}\) Question 21.
\(^{195}\) Question 21, respondent 35.
was linked to management structure in the eyes of some respondents, for example: “Our management structure now reflects what our clients would expect from their suppliers - which is not the traditional partnership model.”

4.11 Offering a fixed fee upfront was seen as a key difference for nearly a quarter of the survey respondents regulated by the SRA. Further, 61% provide an upfront fixed fee at the outset of the case, but only 24% advertised their prices. The growth of fixed fee offerings for individual consumers was noted in Part 1 of this analysis. Our expectation is that much of this change has been driven by non ABS firms offering fixed fee deals, further illustrated by recent media reports about fixed fee deals for business consumers in relation to mergers and acquisitions. We interpret this as an example of incumbent firms responding to the threat of competition.

Figure 58. What makes ABS different from other types of law firm?

<table>
<thead>
<tr>
<th>Feature</th>
<th>Percentage of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>We are no different</td>
<td>41%</td>
</tr>
<tr>
<td>We market ourselves as a traditional law firm</td>
<td>20%</td>
</tr>
<tr>
<td>Our brand name is familiar to consumers</td>
<td>22%</td>
</tr>
<tr>
<td>We offer a wider range of services – not just legal</td>
<td>14%</td>
</tr>
<tr>
<td>We listen to what consumers want and what businesses need</td>
<td>29%</td>
</tr>
<tr>
<td>We offer an upfront fixed fee right at the outset</td>
<td>24%</td>
</tr>
<tr>
<td>We are more competitively priced</td>
<td>18%</td>
</tr>
<tr>
<td>We focus on what businesses need</td>
<td>31%</td>
</tr>
<tr>
<td>We provide services to consumers who don’t want to go to traditional solicitors</td>
<td>18%</td>
</tr>
<tr>
<td>We provide 24/7 access to services</td>
<td>20%</td>
</tr>
<tr>
<td>We offer services online</td>
<td>12%</td>
</tr>
<tr>
<td>Other</td>
<td>18%</td>
</tr>
<tr>
<td>No answer</td>
<td>6%</td>
</tr>
</tbody>
</table>

4.12 The literature suggests that in terms of best practice, innovation should be the responsibility of those who deal with customers on a day-to-day basis, and should involve end users at every stage. In terms of who is responsible for developing new services and designing more efficient processes, for SRA regulated ABS licence holders in most cases it is the senior management team (71%) compared to 22% responding that all employees are. However, this group of firms did indicate making use of customer input into the design of services, with 90% of SRA regulated respondents indicating they had done this. The most common form was a firm talking to consumers about what they wanted (69%) or responding to existing customers request for new services (37%), reviewing complaints data (33%) and undertaking research into customer needs (31%). In terms of regularity of feedback, 82% of the respondents regularly seek feedback from their customers, and 63% had reviewed that feedback in

Question 21, respondent 26.

Question 20

See http://www.legalfutures.co.uk/latest-news/riverview-dmh-unveil-fixed-fee-ma-service


Question 5
the last month. This shows that some of the key elements research suggests are necessary to support innovation are in place at these organisations.

4.13 Similar to the NESTA survey findings, this group of firms saw regulation (43% of SRA regulated ABS licence holders) and the traditional partnership model (41%) as a key barrier to innovation and growth. However, another key issue reported was the uncertainty of future laws and regulation - 47% for SRA but just 8% for CLC regulated respondents. Presumably this reflects the range of different practice areas that SRA regulated ABS licence holders undertake, compared to just conveyancing and probate work undertaken by CLC regulated licence holders. Similarly, access to capital was more frequently reported as an issue for SRA regulated than CLC regulated respondents - 39% compared to 15%.

Figure 59. What do you see as the main barriers to innovation and growth in the legal services market?

<table>
<thead>
<tr>
<th>Barriers</th>
<th>CLC Regulated (n=13)</th>
<th>SRA Regulated (n=49)</th>
<th>All (n=64)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to capital – banks won’t lend to law businesses</td>
<td>15%</td>
<td>39%</td>
<td>33%</td>
</tr>
<tr>
<td>Traditional partnership business model</td>
<td>31%</td>
<td>41%</td>
<td>39%</td>
</tr>
<tr>
<td>Lack of information on how to innovate</td>
<td>0%</td>
<td>10%</td>
<td>8%</td>
</tr>
<tr>
<td>Consumers like traditional services</td>
<td>23%</td>
<td>12%</td>
<td>14%</td>
</tr>
<tr>
<td>Existing regulation</td>
<td>15%</td>
<td>43%</td>
<td>39%</td>
</tr>
<tr>
<td>Uncertainty of future laws/regulation</td>
<td>8%</td>
<td>47%</td>
<td>38%</td>
</tr>
<tr>
<td>Other</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>No answer</td>
<td>23%</td>
<td>4%</td>
<td>6%</td>
</tr>
</tbody>
</table>

4.14 In terms of specifics, a few respondents put forward the successor practice rule as a key barrier to innovation. A few mentioned existing regulators and pushed for more regulatory competition.

4.15 To what extent the new business structures constitute examples of business model innovation in themselves is open for debate. Looking at the survey results, for some respondents the new business structure is an opportunity to move away from the traditional partnership model and think more widely about the services provided. This can be how some new business structures market themselves:

"We have used our regulatory approval as a marketing tool. Within the industry, we have used our licence as a badge to show we are innovating."

Or the differences they see between themselves and other legal service providers:

"The customer is the whole focus of the business; the way we're set up and how we deliver our services."

In reality time will tell to what extent these firms represent business model innovation, which will be demonstrated by their "ability to sense deep truths about what consumer

---

201 Questions 22,23,24 and 25.
202 Question 6, respondents 42 and 63.
203 Question 6, respondents 3 and 55.
204 Question 12, respondent 10.
205 Question 21, respondent 43.
Part 4: How has the level of innovation changed?

really want to satisfy consumers unmet needs is perhaps the most important driver of business model innovation.\textsuperscript{206}

Publicised innovation in the last three years – reported new services

4.16 As set out in paragraph 4.3 above we undertook a review of press articles, looking to identify and classify reported examples of innovation. An innovation can be defined as the implementation of a new or significantly improved product (good or service), or process, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations.\textsuperscript{207} In legal services, this can affect pricing, quality, bundling, marketing, cost efficiency, and other areas. For the review of publicised innovations we classified reported innovations as follows:

- **Product/service innovation**: introduction of a good or service that is new or significantly improved with respect to its characteristics or intended uses. This includes significant improvements in technical specifications, components and materials, incorporated software, user friendliness or other functional characteristics. Examples include law firms offering a new consultancy service, and divorce smartphone apps.

- **Process innovation**: implementation of a new or significantly improved production or delivery method. This includes significant changes in techniques, equipment and/or software. Examples include outsourcing of processes, and new information sharing processes within firms.

- **Marketing innovation**: implementation of a new marketing method involving significant changes in product design or packaging, product placement, product promotion or pricing. Examples include advertising fixed price services, and the development of legal services brands.

- **Organisational innovation**: implementation of a new organisational method in the firm’s business practices, workplace organisation or external relations. Examples include new staff training practices, and virtual organisational structures.

4.17 While monitoring changes in business structure is important in understanding changes in competition, in this review we do not classify gaining an ABS license an innovation. For our analysis, we look for more evidence, before describing an organisation as innovative. Each of the publicised innovations relate to one of the areas above.

4.18 The review of publicised innovations found 205 different reported innovations from 163 different organisations. Of these, 100 were legal service firms regulated by the SRA. Of these 30 were ABS licence holders, and 70 were other types of SRA regulated entity. The remaining 63 organisations not regulated by SRA were made up of 23 introducers – matching customers to organisations –11 unregulated legal service businesses, 8 networks or franchises, 5 private litigation funds, 5 regulated legal service businesses, 4 legal services support firms, 4 CLC regulated ABS licence holders, and 8 other types of businesses. The press review found 23% of the publicised innovations occurring in 2010/11, 36% in 2011/12 and 40% in 2012/13, which we can speculate is driven by both more underlying innovation activity as well as a greater focus on these things within the trade media. Nearly a quarter of these organisations come from outside of the regulated legal sector.


4.19 Classifying the publicised innovation into one of the four types set out above shows that marketing innovations are most frequently reported. While this might be reflected by nature of the press review, the most frequent examples were introducer websites and panels being set up over the past three years, and the development of different franchises and networks providing a brand for existing firms to take advantage of. Further, a move to offering a fixed fee is classified as a marketing innovation, further increasing the number of publicised innovations in this category. Unbundling of services would be classified as a new product or service.

4.20 Of course, this analysis does not capture what the impacts or potential impacts of these innovations might be, but it does show that new approaches are being tried and publicised by different types of organisations. Further, proportionally more ABS licence holders than other SRA regulated organisations reported innovations – 30 out of potential 119 ABS licence holders. Firms in the ‘Top 100’ law firms accounted for 33% of the publicised innovations, in line with the NESTA survey findings that larger firms are more innovative. The extent to which size of a firm and levels of innovation are more generally related is unknown, but the Competition Commission suggest a link because large firms “will face smaller average total costs because they can average the fixed costs of their innovative effort over a greater level of output; and they may be able to support a larger portfolio of R&D efforts, increasing the likelihood that this will develop an improved product or process.”

208 Regulations in some US states prescribe what can be classified as unbundled - http://www.natlawreview.com/article/improving-access-to-justice-unbundling-legal-services-illinois It is unclear to what extend these types of services are being provided in the UK.

4.21 In terms of which market segments these innovations are affecting, figure 61 shows the proportion of publicised innovations by type and segment. For a third of publicised innovations, no specific area of law was mentioned. For the remaining publicised innovations, the majority are in the business affairs segment and other segment, driven by the volume of publicised new products promoted by the top 100 law firms. Very few new product innovations have been publicised in the remaining market segments, where marketing innovations are more prominent.

Conclusions

4.22 Looking at the 2006-2009 period regulation and the traditional culture were reported to be the main barriers to innovation. These barriers appear to still be in effect. ABS licence holders report the same areas as barriers, alongside a lack of access to capital and the uncertainty around future laws and regulation.

4.23 Generally, the business affairs, other, injury, employment, and family market segments are associated with the highest level of publicised innovations. The civil liberties, consumer, immigration, crime, and intellectual property rights market segments are associated with the lowest levels. However, this could be explained by lower levels of media interest, dominance of legal aid funding, and the higher volumes of smaller firms in these categories.

4.24 What innovation we can see suggests that ABS might be a catalyst – either through existing firms responding or because of ABS firms innovating. While having an ABS licence is not in itself an innovation, ABS licence holders as a group appear to be more frequently mentioned in publicised examples of innovation. ABS organisations are associated with more frequent reports of new innovations when compared to other SRA
regulated providers, with around 13% of ABS organisations publicising an innovation not related to their organisational structure. Just 1% of other SRA regulated organisations reported any form of innovation.

**Figure 62. Price changes for business to business legal services**

4.25 These organisations were mainly providing services to business consumers, but this does not appear to be resulting in falls in prices charged. The figure 62 above plots the business to business legal services prices index for the past three years, against inflation. This shows prices rising at the same level as inflation.

4.26 While we remain very aware that the full scope of innovation is unlikely to be captured in this analysis, in that we may be underestimating the true levels, this does identify continued issues with regulation as a barrier. Given the time scales involved it is clearly too early to understand the full impacts of these innovations. However, with new business structures in place, there appears to be positive momentum towards increased competition, which should drive more innovation in the years ahead – a conclusion echoed in a recent report.\(^{210}\)

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABS</td>
<td>Alternative business structures. From October 2011 non-legal firms have been able to offer legal services to their customers in a way that is integrated with their existing services. Law firms have been able to develop their portfolios to compete across wider areas compared with their existing experience.</td>
</tr>
<tr>
<td>Aggregate</td>
<td>The sum or combination of many separate units or items.</td>
</tr>
<tr>
<td>AR or approved regulator</td>
<td>A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4, and whose regulatory arrangements are approved for the purposes of the LSA and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR.</td>
</tr>
<tr>
<td>Asymmetric information</td>
<td>A situation in which one party in a transaction has more or better information compared to another.</td>
</tr>
<tr>
<td>Authorised Person</td>
<td>A person authorised to carry out a reserved legal activity</td>
</tr>
<tr>
<td>BSB</td>
<td>Bar Standards Board – the independent Regulatory Arm of the Bar Council.</td>
</tr>
<tr>
<td>CLC</td>
<td>Council for Licensed Conveyancers – the regulator of Licensed Conveyancers.</td>
</tr>
<tr>
<td>Cash turnover</td>
<td>The amount of cash turnover reported in a given time period.</td>
</tr>
<tr>
<td>Concentration ratio</td>
<td>The concentration ratio measures the combined market share of the largest firms in a market. For example, the ‘five firm’ concentration ratio is simply the sum of the market shares of the five largest firms in the market. It does not provide any information on the relative size of the firms nor on the number, or size, of the smaller firms. As this percentage changes over time we can infer that competition has increased or decreased, more still if the makeup of the 10 firm ratio change over time as well.</td>
</tr>
<tr>
<td>Consumer Panel</td>
<td>The panel of persons established and maintained by the Board in accordance with Section 8 of the LSA (2007) to provide independent advice to the Legal Services Board about the interests of users of legal services.</td>
</tr>
<tr>
<td>Demand side substitution</td>
<td>The types of legal service and supplier that consumers can choose between. For the purchase of a house they can substitute their demand for advice from a solicitor for a licensed conveyancer, for example.</td>
</tr>
<tr>
<td>HHI</td>
<td>The Herfindahl –Hirschman index (HHI) reflects both the number -the industry and their relative size. It is defined as the sum of the squares of all the market shares in the market, and gives proportionately greater weight to the larger market shares. In terms of interpreting the outputs, the Competition Commission state that any market with an HHI in excess of 1,000 as concentrated 211 As the HHI get closer to zero, economic theory suggests firms have no ability to influence price and are price takers.</td>
</tr>
</tbody>
</table>

| **Law practice** | The term used by the SRA to describe a solicitors firm offering legal service to the public. In 2012/13 these accounted for 68% of places where solicitors with an active practicing certificate work. The remainder work providing services in house within commerce and industry (28%), educational establishments (1%) and a range of other organisation (7%). The focus of this study is on law practices. |
| **LA or Licensing Authority** | An approved regulator which is designated as a licensing authority to license firms as ABS. |
| **LSA** | Legal Services Act 2007 |
| **LSB** | Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales |
| **LeO** | Legal Ombudsman - The single organisation for all consumer legal complaints |
| **Legal need** | Problems that – whether or not they are and whether or not those concerned appreciate this – could potentially be resolved through a legal process – ‘justiciable’ |
| **Market concentration** | Extent or degree to which a relatively small number of firms account for a relatively large percentage of the market. The degree of concentration in a market may be measured in different ways, depending on the nature of competition and availability of data. |
| **Market segment** | An identifiable group of individuals, families, businesses, or organizations, sharing one or more characteristics or needs in an otherwise homogeneous market. The market segments in this analysis are defined by demand side substitution using type of problem and type of consumer |
| **Market share** | The percentage of a market accounted for by a business or group of businesses. In this analysis this is measured by turnover. |
| **Minimum efficient scale** | The lowest level of output a company can achieve while still taking advantage of economies of scale in relation to costs. |
| **Non legally qualified fee earners** | An employee of the firm who generates fees from customers but is not an authorised person. |
| **OFT** | Office of Fair Trading. A non-ministerial government department of the United Kingdom, which enforces both consumer protection and competition law. |
| **OLC** | Office for Legal Complaints. NPDB established by the Legal Services Act to establish an independent Legal Ombudsman Service (see LeO) |
| **Price-costs margin** | A market concentration measures that looks at profit margins for individual providers and compares them to the industry as a whole. The rationale is that where one is more efficient than the other is, the more efficient firm will have higher profits than the less efficient firm will. As the industry becomes more competitive, for given efficiency levels of the firms, the profits of the more efficient firm go up relative to the profits of the less efficient firm. This can happen because the profits of the more efficient firm actually increase, or if the more efficient firm’s profits falls, then the profits of the less efficient firm fall by more. |
| **Principles of Better Regulation** | The five principles of better regulation; being proportional, accountable, consistent, transparent and targeted |
| **Productivity** | The rate at which goods or services are produced especially output per unit of labour. In this analysis we define productivity a turnover per fee earner. |
| **Real turnover** | The amount of turnover reported in a given time period adjusted to take account of inflation. All cash figures have been converted to 2010/11 prices using the HM Treasury GDP deflator to exclude the impacts of inflation since 2010/11, unless otherwise stated. |
| **Regulatory Objectives** | There are eight regulatory objectives for the LSB that are set out in the Legal Services Act (2007): 1 protecting and promoting the public interest 2 supporting the constitutional principle of the rule of law 3 improving access to justice 4 protecting and promoting the interests of consumers 5 promoting competition in the provision of services in the legal sector 6 encouraging an independent, strong, diverse and effective legal profession 7 increasing public understanding of citizens legal rights and duties 8 promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality. |
| **Reserved Legal Activity** | Legal services within the scope of regulation by the Approved Regulators |
| **SRA** | Solicitors Regulation Authority - regulatory body of the Law Society |
| **Turnover** | Turnover figure means a firm's total gross fees arising from work undertaken from offices in England and Wales. Gross fees includes: all professional fees of the firm including remuneration, retained commission, and income of any sort whatsoever of the firm (including notarial fees). Work in Progress (WIP) should be included. Gross fees does not include: interest, reimbursement of disbursements, VAT, remuneration from a non-private practice source, dividends, rents, and investment profit. |